

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1068/2015

Shanthi

...Petitioner

Vs.

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai-9.
2. The District Magistrate & District Collector
Coimbatore.
3. The Inspector of Police
Annur Police Station,
Coimbatore District.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records of the 2nd respondent in proceedings No.Cr.MP.No.04/G/2015/E1 dated 02.02.2015, quash the same and produce the body of the detenu viz., Thiru K.Ramanathan, aged 40 years, son of Kallanai, who is detained under Goonda in Central Prison, Coimbatore before this Court and set the detenu at liberty.

For petitioner : Mr.Karthick
for M/s. T.S.Gopalan & Co.,

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R
[Order of the Court was made by S.TAMILVANAN, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Cr.MP.No.04/G/2015/E1 dated 02.02.2015, whereby the brother-in-law of the petitioner by name K.Ramanathan, aged 40 years, son of Kallanai, was ordered to be detained under the provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2.As per the grounds of detention dated 29.10.2014, passed by the second respondent, the detenu came to adverse notice in the following cases:

i)Adverse Cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Ramanathapuram District, Uchipuli PS Cr.No.339/2012	395 IPC
2	Sivagangai District Poovanthi PS Cr.No.136/2012	147, 294[b], 323, 506[i] IPC
3	Chettipalayam PS Cr.No.145/2014	397 IPC
4	Chettipalayam PS Cr.No.175/2014	379 IPC
5	Kinathukadavu PS Cr.No.306/2014	394, 397 IPC & 25 Arms Act, 1959
6	Vadavalli PS Cr.No.305/2014	392 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Annur PS Cr.No.440/2014	392 IPC r/w 4 of Tamilnadu Prohibition of Harassment of Women Act 1998.

3. Though many grounds have been raised in the petition, Mr.Karthick, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4.Learned counsel appearing for the petitioner submitted that the detenu has been formally arrested and remanded to judicial custody in the adverse cases No.3 to 6, viz., in Cr.Nos.145/2014, 175/2014, 306/2014 and 305/2014 registered by Chettipalayam Police Station, Kinathukadavu Police Station and Vadavalli Police Station respectively and though the said factum of the remand of the detenu in the adverse cases in Cr.Nos.145/2014, 175/2014, 306/2014 and 305/2014 has been reflected in the grounds of detention, more particularly in paragraph 5 of the Detention order, the Detaining Authority has not stated whether the relatives of the detenu has taken any steps to move bail applications in respect of those cases as on the date of passing of the detention order. Further, the detenu has been granted bail in the ground case [Cr.No.440/2014] by the learned Judicial Magistrate, Mettupalayam, in CMP.No.324/2015 on 23.01.2015 and the basis of such bail being granted in the ground case, the Detaining Authority has inferred that there is a real possibility of the detenu coming out on bail in the adverse cases. This is indicative of the non-application of mind on the part of the Detaining Authority and hence, submitted that the detention order is vitiated and the same is liable to be quashed.

5.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6.We have heard the learned counsel for both sides with regard to the facts and citation.

7.As could be evidenced from the paragraph No.1 of the Grounds of Detention furnished before us, the detenu was formally arrested by way of P.T.Warrant in the adverse cases No.3 to 6 in Cr.Nos.145/2014, 175/2014, 306/2014 and 305/2014 registered by Chettipalayam Police Station ; Kinathukadavu Police Station and Vadavalli Police Station respectively. It is seen that though the factum of remand of the detenu in the adverse cases No.3 to 6, viz., in Cr.Nos.145/2014, 175/2014, 306/2014 and 305/2014, has been reflected in paragraph 5 of the Grounds of Detention and though a reference has been made in

respect of the bail being granted in the ground case, nothing has been stated about whether the detenu has filed any bail applications in the said adverse cases or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse cases. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

8.It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

9.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

10.Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai-9.
2. The District Magistrate & District Collector
Coimbatore.

3. The Inspector of Police
Annur Police Station,
Coimbatore District.

4. The Superintendent of Central Prison
Coimbatore.

5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

6. The Public Prosecutor,
High Court, Madras.

1 CC to M/s. T.S.Gopalan & Co, Advocate SR.No. 28276

KK (CO)
PSI (07.07.2015)

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