

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM

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

H.C.P.No.1084/2015

S.Jannandui Prithose

..

Petitioner

Vs.

1.State rep. by
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Chennai Police, Chennai.

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Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus calling for the records relating to the order dated 06.04.2015 made in Order No.290/2015 issued by the second respondent and quash the same and produce the detenu, viz., S.Sahul Hameed @ Sullan Sagul, son of Sikkander Kasim, aged about 26 years, now detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

ORDER

[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 BCDFGIISSSV No.290/2015 dated 06.04.2015, whereby the detenu, by name, S.Sahul Hameed @ Sullan Sagul, son of Sikkander Kasim, aged 26 years was ordered to be detained under the provisions of the 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 "Video Pirator".

2. Though many grounds have been raised in the petition, 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.

3. Learned counsel appearing for the petitioner submitted that the Detaining Authority in order to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case has relied on similar case in Cr.No.269/2014 registered by the Central Crime Branch for the offences u/s.52(A), 68(A), 51 r/w. 63 & 65 Copy right Act, 1957 and 292(2)(a) IPC, wherein, the accused was granted bail by the learned III Metropolitan Magistrate, George Town, Chennai, eight days after the date of detention order was passed. But, whereas in the Special Report, it is stated that the Remanding Court in such similar cases usually grant bail to the detenu on the 5th day after the detention order was passed. This is indicative of non-application of mind. Thus, the detention order is vitiated on this ground alone and the same is liable to be quashed.

4. 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.

5. We have heard the learned counsel for both sides with regard to the facts.

6. A perusal of the Grounds of Detention, in particular paragraph No.4, it is seen that the Detaining Authority has placed reliance on a similar case to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case, wherein, the detenu was granted bail eight days after the date of detention. In the booklet supplied to the detenu, in particular, page No.85, Special report, wherein it is stated that in such similar cases usually the Remanding Court will grant bail to the detenu on the 5th day after the detention order was passed. This is indicative of non-application of mind. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

7. 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.

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

9. 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

//True Copy//

Sub Assistant Registrar

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To

1. State rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 9.
2. The Commissioner of Police,
Chennai Police, Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison
Puzhal, Chennai.
5. The Joint Secretary to Government Public
(Law & order) Department, Secretariat, Chennai-9.

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