

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2015

CORAM

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

H.C.P.No.1099/2015

S.Senthil Kumari

...Petitioner

Vs.

1.The State represented
by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Police,
Coimbatore City, Coimbatore.

...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 leading to the detention of the petitioner's husband namely K.Srinivasan, son of Kannaiyan, aged about 42 years under Act 14/1982 vide detention order 01.03.2015 on the file of the second respondent made in proceedings in C.No.07/G/IS/2015, quash the same, consequently direct the respondents herein to produce the body and person of K.Srinivasan, son of Kannaiyan, who is lodged at Central Prison, Coimbatore before this Court, set him at liberty.

For petitioner : Mr.C.D.Sugumar

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 C.No.07/G/IS/2015 dated 01.03.2015, whereby the detenu, by name, K.Srinivasan, son of Kannaiyan, aged

about 42 years, 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 "VIDEO PIRATE".

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

3. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.34/2015 registered by Coimbatore Video Piracy Cell, CB CID and the bail application filed by the detenu before the learned Judicial Magistrate No.II, Coimbatore in C.M.P.No.982/2015 was dismissed on 25.02.2015. Another bail application filed before the same court in C.M.P.No.1103/2015 was also dismissed on 27.02.2015. Thereafter, the detenu has not moved any bail application in the ground case as on the date of the passing of the detention order. He further submitted that in paragraph No.3 in Page No.3 of the grounds of detention, the Detaining Authority has mentioned about the involvement of the detenu in a case in Cr.No.106/2015 u/s.292(A) IPC and 51(A), 52(A), 63, 65 r/w. 68(A) of Copy Right Act 1957 on the file of the B9 Saravanampatty Police Station. But no mention has been made about the said case in paragraph No.7 while arriving at the subjective satisfaction that the detenu would be granted bail. 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.

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 and citation.

6. As could be evidenced from the grounds of detention, in paragraph No.3, it is stated as follows:

"3..... In this juncture, the accused

K.Srinivasan was arrested by the Inspector of Police, Law and Order, B9 Saravanampatty Police Station, Coimbatore City on 11.02.2015 for his involvement in the Coimbatore City, B9 Saravanamapatty Police Station Crime NO.106/2015 u/s. 292 (A) IPC and 51(a), 52(A), 63, 65 r/w. 68 (A) of Copy Right Act 1957 in which 1019 CDs of new Tamil films and pornographic CDs were seized from him. In this case, he was remanded to judicial custody on 11.02.2015 and lodged in Central Prison, Coimbatore."

But nothing has been stated about the said case in Cr.No.106/2015 by the Detaining Authority as to whether the detenu has filed any bail application or whether he has granted any bail in which the detenu is in remand. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

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 grounds.

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(CS-III)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Police,
Coimbatore City, Coimbatore.

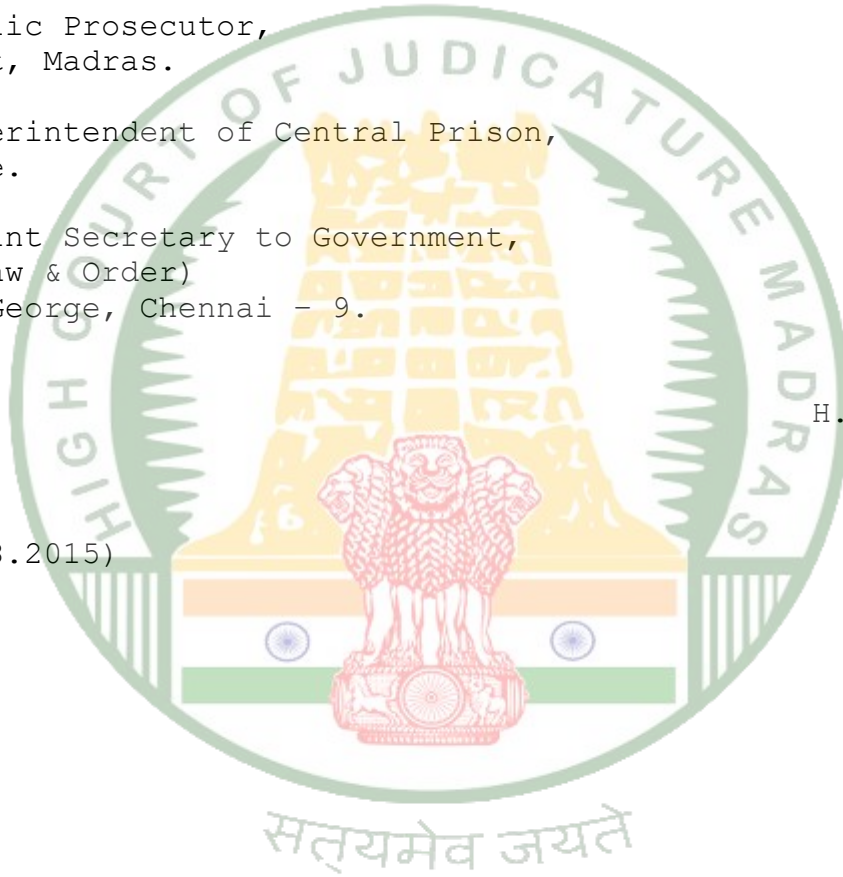
3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent of Central Prison,
Coimbatore.

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

H.C.P.No.1099/2015

GP (CO)
PSI (17.08.2015)



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