

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.1153 of 2014

D.Poongodi

...Petitioner

Vs.

1. State rep. by Secretary to Govt. Home,
Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records in BCDFGISSSV No.37/2015 passed by the second respondent on 22.04.2015 and to set aside the same and direct the respondents to produce the detenu Dhasarathan, son of Annakotti, aged 38 years, who is now detained in Central Prison, Vellore, before this Court and to set him at liberty.

For petitioner : Mr.S.Swamidoss Manokaran

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.TAMILVANAN, J.]

The petitioner has filed M.P.No.1 of 2015 in the above petition seeking an order for fixation of early date for final hearing in the above petition, as the petitioner/wife of the detenu has suffering from cardiac problem and that there is nobody to take care of her children and the presence of the alleged detenu is very much

necessary to take care of the family. Hence, this Court after hearing the submissions made on either side, allowed the Miscellaneous Petition today and the above Habeas Corpus Petition is taken up for final disposal.

2.Challenge is made to the order of detention passed by the second respondent vide Proceedings in BCDFGSSSIV No.37/2015 dated 22.04.2015, whereby the husband of the petitioner by name Dhasarathan, S/o.Annakotti, aged about 38 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 "GOONDA".

3.Though many grounds have been raised in the petition, Mr.S.Swamidoss Manokaran, 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 would submit that the 2nd bail application which has been filed by the alleged detenu in the ground case before this Court in Crl.O.P.No.10341/2015, subsequent to the dismissal of the earlier bail application by the learned District Sessions Court-II, Kancheepuram in Crl.M.P.No.467/2015 on 20.04.2015, was pending as on the date of passing of the detention order and the Detaining Authority has arrived at a subjective satisfaction that the detenu would be released on bail in the ground case by placing a reliance of the similar case wherein the accused Rajkumar was released on bail by this Court on 23.09.2014 in Crl.O.P.No.1407/2014. But the said accused Rajkumar was released on bail by this Court in respect of the very same crime number in Crl.O.P.No.29930/2014 on 17.11.2014 only. 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 rightly pointed out by the learned counsel for the petitioner, it is seen that in paragraph-5 of the Grounds of Detention placed before us, the Detaining Authority has stated the accused Rajkumar along with his associates have been released on bail by this Court on 23.09.2014 in Crl.O.P.No.1407/2014 in connection with the case in Cr.No.959/2014 for the offence u/s.294 (b), 506(ii), 352, 307 IPC read with 3(i) Tamil nadu Property (Prevention of Damage & Loss) act, 1992. However, on a perusal of the booklet furnished before this Court, in particular page 225, it is seen that the said accused and his associates were released on bail by this Court only on 17.11.2014 and that too, only in Crl.O.P.No.29930/2014 and not in Crl.O.P.No.1407/2014. Hence, it is to be stated that the Detaining Authority has furnished a wrong petition number and the date in respect of release of the accused in similar case. This, furnishing of irrelevant particulars would deprive the opportunity of making an effective representation by the detenu and the same amounts to infringement of right under Section 22(5) of the Constitution of India and the same would vitiate the order of detention.

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 in No. BCDFGSSSV No.37/2015 dated 22.04.2015 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

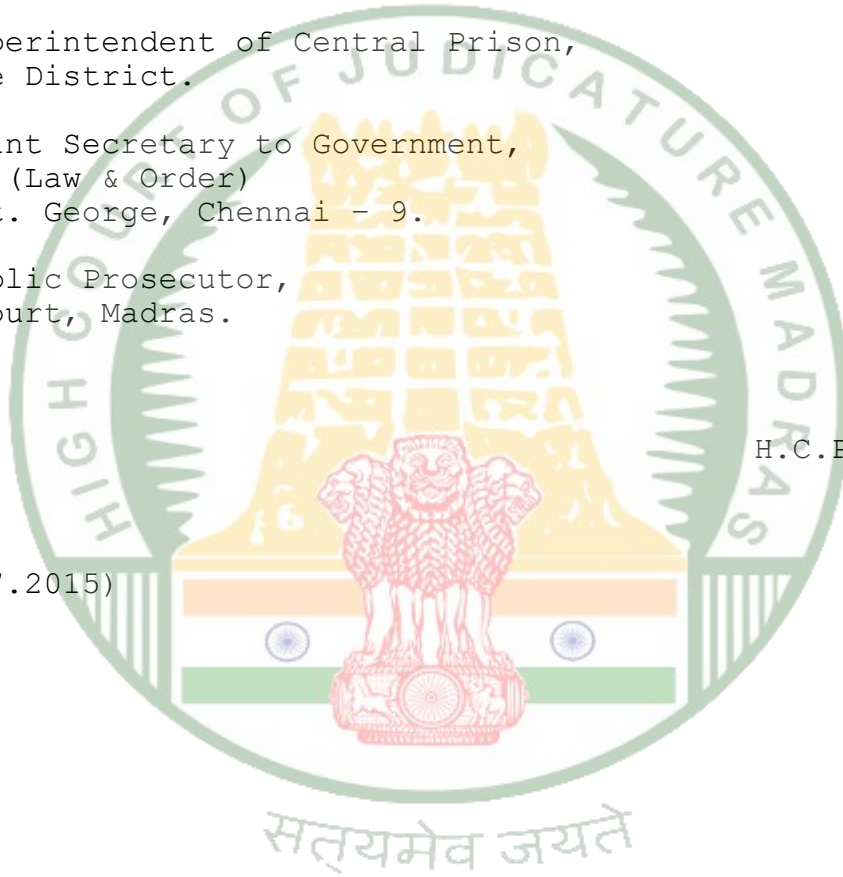
kal

To

1. State rep. by Secretary to Govt. Home,
Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.
3. The Superintendent of Central Prison,
Vellore District.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1153 of 2014

TM (CO)
PSI (15.07.2015)



WEB COPY