

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

CORAM

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

H.C.P.No.1162/2015

Govindaraj

Vs.

Petitioner

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

2.The Commissioner of Police
Chennai City,
Vepery, Chennai - 7.

3.The Inspector of Police,
F5 Choolaimedu Police Station,
Chennai.

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Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to call for the records in Memo No.244/BCDFGISSV/2015 dated 14.03.2015 passed by the second respondent and quash the same as illegal and consequently direct the respondents to produce the detenu Umar @ Umar Basha S/o.Ajeez aged about 25 years who is now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.J.Milton Arul Rajendran
For RR 1 & 2 : Mr.M.Maharaja,APP

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 No.244/BCDFGISSV/2015 dated 14.03.2015, whereby the detenu, by name, Umar @ Umar Basha, son of Ajeez, aged 25 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 "GOONDA".

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 has relied on certain similar cases to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case as well as in the adverse cases. But, in respect of one particular similar case, viz., the case in Cr.No.415/2014 on the file of F4 Thousand Lights Police Station, the accused therein was granted bail by this Court in CrI.OP.No.12847/2014. But, in the Booklet, the copy of the relaxation order in the said bail order, viz., MP.No.1/2014 in CrI.OP.No.12847/2014 dated 08.07.2014 was furnished to the detenu. This factum of supplying non-essential material particulars would deprive the detenu from making effective representation. 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 few similar cases to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the adverse cases and in the ground case. But a perusal of the booklet supplied to the detenu, in particular, page No.265, it is evidenced that a copy of the relaxation order granted by this Court in MP.No.1/2014 in CrI.OP.No.12847/2014 dated 08.07.2014 was furnished instead of the copy of the bail order in CrI.OP.No.12847/2014. This furnishing of irrelevant and unwanted material particulars has resulted in the detenu being deprived of making an effective representation. 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. The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
2. The Commissioner of Police
Chennai City,
Vepery, Chennai - 7.
3. The Inspector of Police,
F5 Choolaimedu Police Station,
Chennai.
4. The Superintendent of Central Prison
Puzhal, Chennai.
5. The Joint Secretary to Government
Public (Law & Order)
Fort St. George, Chennai-9
6. The Public Prosecutor,
High Court, Madras.

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