

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.1163 of 2015

S.Lakshmi

.. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government
Home, Prohibition & Excise Department,
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Chennai Police, Chennai - 8.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the order of detention 267/2015 dated 23/03/2015 passed by the 2nd respondent and to quash the same and also to direct the detainee THIRU.SELVAM @ THOTHA SELVAM S/O.SAMPATH 28 YEARS who is presently detained in the Central prison PUZHAL CHENNAI to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.C.C.Chellappan
For Respondents : 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 BCDFGISSV No.267/2015, dated 23.03.2015 whereby the detenu, by name, Selvam @ Thotha Selvam, S/o.Sampath, aged about 28 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 detention order has been passed on 23.03.2015, but the brother of the detenu, namely, Murthi has sent representation to the second respondent on 09.02.2015 itself and the same has not been considered. Thus, the detention order is vitiated on these grounds 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 booklet supplied to the detenu would show that the brother of the detenu has sent representation on 09.02.2015 i.e. prior to the date of detention order. But the said pre-detention representation has not been considered by the second respondent. 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.In the result, this Habeas Corpus Petition is allowed. The impugned detention order 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
The State of Tamil Nadu,
Home, Prohibition & Excise Department,
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Chennai Police, Chennai - 8.

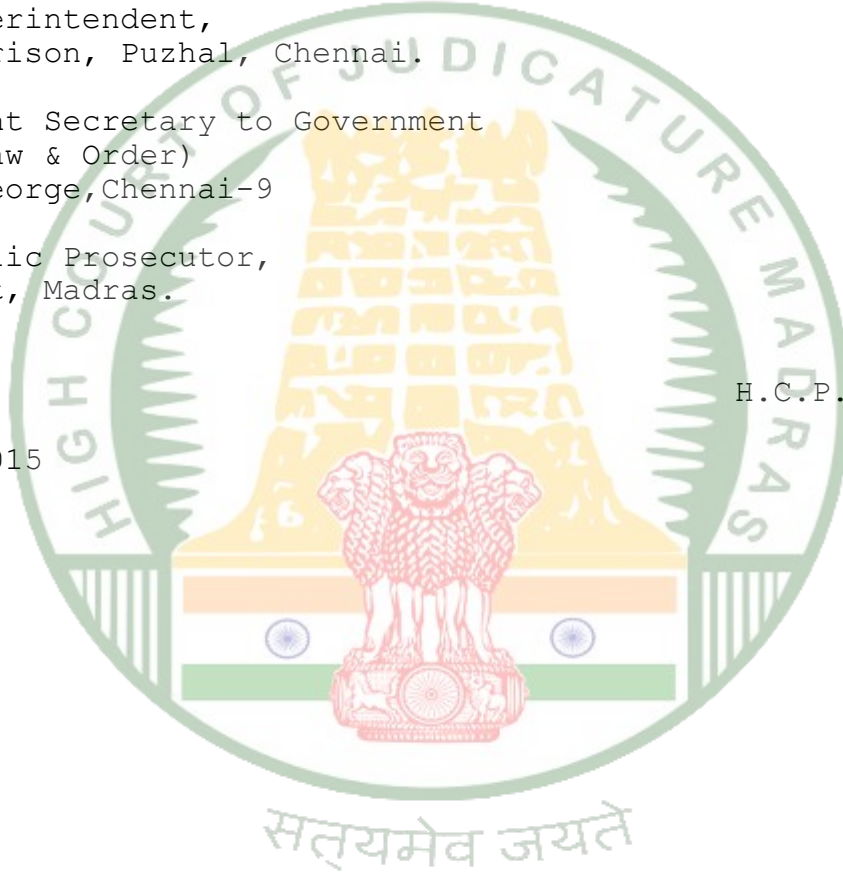
3.The Superintendent,
Central Prison, Puzhal, Chennai.

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

5.The Public Prosecutor,
High Court, Madras.

ak(Co)
pmk.7.9.2015

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