

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2015

CORAM

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

H.C.P.No.1196/2015

Bakkiyam

.. Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Secretary
Home, Prohibition & Excise Department
Fort St.George, Chennai 600 009.

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

... 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 detention order in Memo No.325/BCDFGISSSV/2015 dated 17.04.2015 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Kumar @ Udhayakumar S/o.Arunachalam aged about 40 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the petitioner husband Kumar @ Udhayakumar S/o.Arunachalam aged about 40 years the detenu herein at liberty.

For Petitioner : Mr.D.Gopi Krishnan
For RR 1 & 2 : 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 No.325/2015 dated 17.04.2015, whereby the detenu, by name, Kumar @ Udhayakumar S/o.Arunachalam aged about 40 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.588/2014 on the file of E2 Royapettah Police Station, the accused, viz., Anandan therein was granted bail by the learned 18th Metropolitan magistrate, Saidapet, Chennai in CrI.MP.No.1611/2014. But, in the Booklet, in particular, in page No.245 [in vernacular version], the copy of the bail application of some other accused, viz., Jamaludin was furnished to the detenu. This factum of supplying irrelevant 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 it is seen that though the English version of the said similar case is correctly furnished in page No.243, the vernacular version furnished in page No.245 [in vernacular version], relates to one Jamaludin and not that of Anandan, which was relied upon by the Detaining Authority to arrive at such subjective satisfaction. 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
State of Tamil Nadu,
Home, Prohibition & Excise Department
Fort St.George, Chennai 600 009.

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

3.The Superintendent of 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.

H.C.P.No.1196/2015

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pmk.4.9.2015