

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.1205/2015

Devi

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Petitioner

Vs.

1.The State of Tamilnadu
Rep. by its Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Chennai Police, 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 order of detention 355/2015 dated 27/04/2015 passed by the 2nd respondent and to quash the same and also to direct the detenu THIRU.PACHAIAPPAN S/O.SRINIVASAN 36 YEARS who is presently detained in the Central Prison PUZHAI CHENNAI to be produced before this Hon'ble court and set at liberty.

For Petitioner : Mr.M.Rajavelu

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.355/2015 dated 27.04.2015, whereby the detenu, by name, Pachaiappan, son of Srinivasan, aged 36 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 in order 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 has relied on similar case in Cr.No.1037/2015 on the file of the D6 Anna Square Police Station, the accused therein was granted bail by the learned Principal Sessions Judge, Chennai in CrI.MP.No.5655/2015. But, in the Booklet, the copy of the bail application and bail order relating to some other accused in Cr.No.598/2015 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 a similar case 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 Nos.211 to 219, it is evidenced that a copy of the bail application and bail order granted by the learned Principal Sessions Judge in Cr.No.598/2015 was furnished instead of the copy of the bail application and bail order in Cr.No.1037/2015. 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 of Tamil Nadu,
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.

2. The Commissioner of Police
Chennai Police, 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.

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pmk.1.10.2015

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