

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2015

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

H.C.P.No.1215/2015

Chandran ... Petitioner/Friend of the detainee
Vs.

1.Government of Tamilnadu,
rep. by its Principal Secretary,
Home, Prohibition & Excise (XVI) Department,
Fort St George, Chennai-600 009.

2.The District Collector and
District Magistrate,
Krishnagiri, Krishnagiri District. ... Respondents

Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Habeas Corpus calling for the records in
S.C. No.14/2015 dated 29.03.2015 on the file of the second respondent
herein and to quash the same and to direct the respondents herein to
produce the body of the petitioner's friend Pakka @ Prakash, aged 26
years, son of Nagaraj, now confined in Central Prison, Salem before
this Court and to set him at liberty.

For petitioner : Ms.R.Subhadra Devi

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

[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 S.C. No.14/2015 dated 29.03.2015,
whereby the friend of the petitioner, by name, Pakka @ Prakash, aged
26 years, son of Nagaraj, 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".

2.Though many grounds have been raised in the petition, Ms.R.Subhadra Devi, 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 placed reliance on a similar case wherein the accused Ashok was released on statutory bail by the learned Judicial Magistrate No.II, Hosur in CrI.MP No.861/2015 on 18.03.2015 for the offence u/s.294(b), 324 and 506(ii) IPC in the case in Cr.No.543/2015 on the file of Hosur Town Police Station, to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case in Crime No.59 of 2015 and in the 2nd adverse case in Crime No.24/2015 wherein the bail applications filed by the detenu in CrI.M.P. Nos.1353 and 1352/2015 dated 26.03.2015 are pending. But, the said similar case is not at all a similar case to the ground case and the 2nd adverse case of the detenu. 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.

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 and citation.

6.As could be evidenced from paragraph No.4 of the Grounds of Detention, the detenu's bail applications filed in the ground case and in the 2nd adverse case in Crime Nos.59 and 24/2015 before the learned Judicial Magistrate No.II, Hosur in CrI.MP. Nos.1353 and 1352/2015 dated 26.03.2015 were pending as on the date of passing of the detention order. It is also further evidenced from the said paragraph that a reference was made to a similar case registered by the Hosur Town Police Station in Cr.No.33/2015, wherein statutory bail was granted to the accused Ashok by the Court concerned. But a perusal of the Booklet/Paper Book placed before this Court, in particular, page No.72, the statutory bail was granted under Section 167 of Cr.P.C. to the said accused. Such is not the position in the case of the detenu. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

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 grounds.

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 Principal Secretary,
Government of Tamilnadu,
Home, Prohibition & Excise (XVI) Department,
Fort St George, Chennai-600 009.

2. The District Collector and
District Magistrate,
Krishnagiri, Krishnagiri District.

3. The Superintendent of Central Prison
Salem.

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.1215/2015

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