

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.1248/2015

Manjula

... Petitioner

Vs.

1.The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 9.

2.District Magistrate and District Collector,
Kancheepuram District,
Kancheepuram.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus calling for the entire records connected with the order of the second respondent herein in BCDFGISSSV No.29/2015 dated 12.04.2015 against the detenu namely Rajan, son of Manivannan aged about 22 years who is confined at Central Prison, Vellore and set aside the same, consequently, directing the respondents herein to produce the body and person of the detenu before this Court and set him at liberty.

For Petitioner : Mr.T.R.Ravi

For Respondents : 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 BCDFGISSSV No.29/2015 dated 12.04.2015, whereby the detenu, by name, Rajan, son of Manivannan, aged 22 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 "Sand Offender".

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 bail in the ground case has relied on similar case in Cr.No.36/2014 registered by the Palur Police Station for the offences u/s.430, 379 IPC r/w. 21(i) of Mines and Minerals Act, wherein, the accused was granted anticipatory bail by this Court in CrI.O.P.No.5221/2014. This is indicative of non-application of mind and 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. सत्यमेव जयते

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.5, 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 ground case. In the booklet supplied to the detenu, in particular, page

Nos.99 to 105 [both in English and vernacular version], a copy of the anticipatory bail order granted by this Court in Crl.O.P.No.5221/2014 was furnished. So, the Detaining Authority in order to arrive at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the ground case, has relied upon the anticipatory bail order instead of relying the bail order. This is indicative of non-application of mind and 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(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 9.

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

3.The Public Prosecutor,
High Court, Madras.

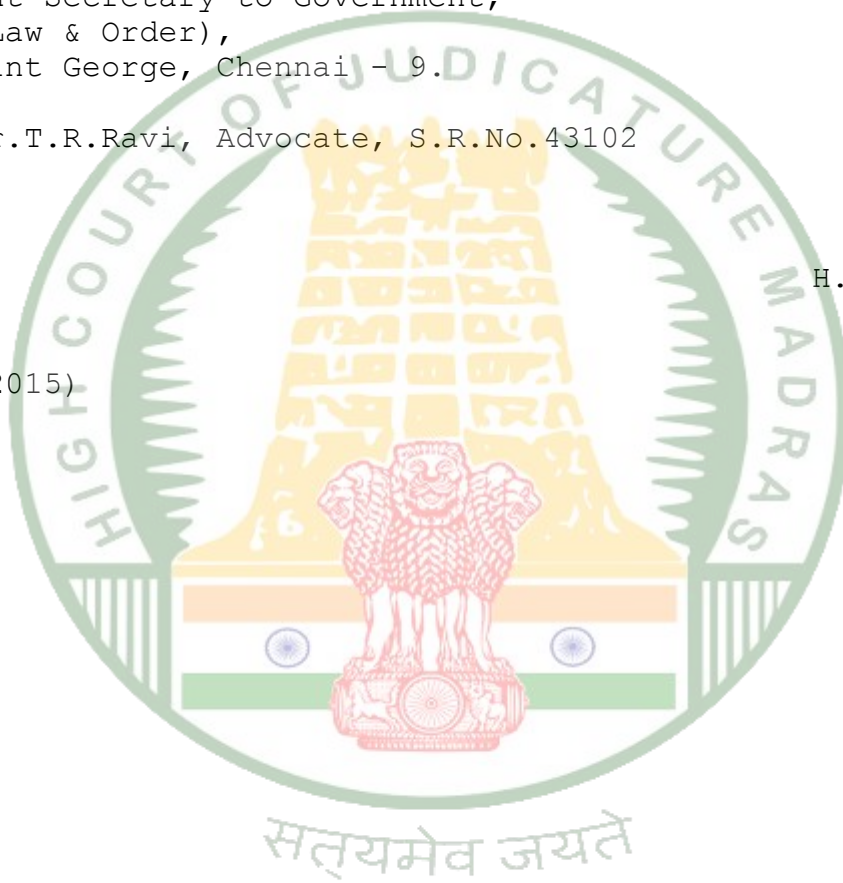
4.The Superintendent of Central Prison
Vellore.

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

+1cc to Mr.T.R.Ravi, Advocate, S.R.No.43102

H.C.P.No.1248/2015

KGK(CO)
CA(15/09/2015)



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