

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.1250/2015

A.Elumalai

... Petitioner

Vs.

- 1.The Secretary to Government,
Food and Consumer Protection Department,
2nd Floor, Namakkal Kavingnar Maligai,
Secretariat, Chennai.
- 2.The District Collector and District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.
- 3.The Secretary to Government,
Food and Consumer Protection Department,
Government of India, New Delhi-110 001.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 16.04.2015 in D.O.No.23/2015-C2 against the petitioner's brother Arumugam, son of Annamalai, aged about 39 years, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban

For Respondents : Mr.M.Maharaja
R1 & R2 Additional Public Prosecutor

R3 : Mr.D.Simon, CGSC

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 D.O.No.23/2015-C2 dated 16.04.2015, whereby the detenu, by name, Arumugam, son of Annamalai, aged 39 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 "Black Marketeer".

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.According to the learned counsel appearing for the petitioner, the Detaining Authority, in the grounds of Detention has stated that the detenu Arumugam was arrested and produced before the learned Judicial Magistrate No.II, Thiruvannamalai on 08.04.2015 and he was ordered to be remanded for 15 days (i.e) till 13.03.2015. But on perusal of the booklet, it is seen that the detenu was remanded till 22.04.2015 This is indicative of total non-application of mind on the part of the Detaining Authority, which vitiates the detention order and the same is liable to be set aside.

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.It is a case, among other grounds, where the learned counsel for the petitioner would urge that the statement made by the Detaining Authority with regard to the remand of the detenu is contrary and the date stands wrongly mentioned in the Grounds of Detention. As evidenced from the Grounds of Detention, in particular, page No.3 [paragraph No.3(d)], it has been stated by the Detaining Authority as follows:-

"Accused Thiru.Arumugam was duly produced before the Hon'ble Judicial Magistrate No.II, Thiruvannamalai and Hon'ble Judicial Magistrate No.I, Thiruvannamali (i/c) on 08.04.2015 and he was ordered to be remanded for 15 dyas (i.e.) till 13.03.2015 by the Hon'ble Judicial Magistrate No.II, Thiruvannamalai and Hon'ble Judicial Magistrate No.I, Thiruvannamali (i/c) and he was lodged at Sub Jail, Tiruvannamalai as a remand prisoner "

But, a verification of the Remand Order [in English version] furnished in page No.18, would show that the detenu was produced before the Court on 08.04.2015 and he was remanded till 22.04.2015. This is indicative of non-application of mind on the part of the Detaining Authority and the same would vitiate the order of detention and the same cannot be sustained in the eye of law.

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 sole ground.

9. Accordingly, the Habeas Corpus Petition is allowed and 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(CS V)

//True Copy//

Sub Assistant Registrar

cse

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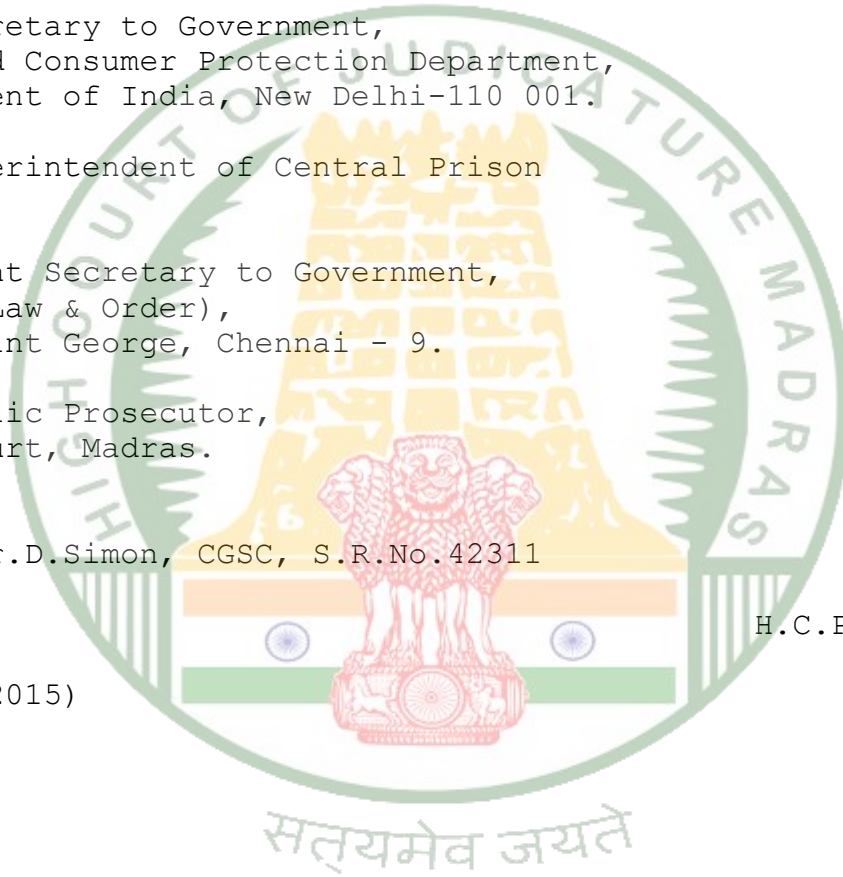
To

- 1.The Secretary to Government,
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- 2.The District Collector and District Magistrate,
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Thiruvannamalai.
- 3.The Secretary to Government,
Food and Consumer Protection Department,
Government of India, New Delhi-110 001.
- 4.The Superintendent of Central Prison
Vellore.
- 5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to Dr.D.Simon, CGSC, S.R.No.42311

KM(CO)
CA(29/09/2015)

H.C.P.No.1250 of 2015



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