

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2015

C O R A M

THE HONOURABLE DR. JUSTICE S.TAMILVANAN
and

THE HONOURABLE MR. JUSTICE C.T.SELVAM

H.C.P.No.126 of 2015

Kannammal alias Kaliamma

...

Petitioner

Vs

1.District Collector and District Magistrate,
Erode District, Erode.

2.State of Tamil Nadu,
rep.by The Principal Secretary
to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009

...

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 relating to the order of detention dated 24/2/2015, calling for the records pertaining to Order No.Cr.M.P.No.17/2014/C1 dated 13.09.2014 passed by the first respondent as confirmed by the order in G.O.No.(Va) No.4685 dated 24.09.2014 passed by the second respondent, letter No.21244/IN, Ma (Ma) A4.9.2014 dated 19.11.2014 and Order No.(Vaa) No.6763 dated 09.12.2014 both passed by the 2nd respondent and to quash the same directing the detenu Mr.Araikadhan @ Palanisamy, son of Nanjan, aged about 50 years to be set at liberty.

For Petitioner : Mr.Giridhar and Sai

For Respondents: Mr.M.Maharaja
Addl. 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 first respondent vide Cr.M.P.No.17/2014/C1, dated 13.09.2014, whereby the detenu/the husband of the petitioner herein, by name, Araikadhan alias Palanisamy, Son of Nanjan, male, aged about 50 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, Mr. Giridhar and Sai, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-application of mind on the part of the detaining authority for arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention.

3. Per contra, Mr. M. Maharaja, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. However, he submitted that in the similar case, referred to in the grounds of detention, the accused therein was released on the ground of mercy and not on merits.

4. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

5. It is seen from paragraph No. 5 of the Grounds of Detention that the detenu was remanded in the ground case in Crime No. 161 of 2014. As could be seen from page No. 9 of the Booklet, in the adverse case in Crime No. 47 of 2013, the detenu was released on bail by the Judicial Magistrate No. 2, Coimbatore, on the ground of mercy and not on the facts of the case. However, the detaining authority has come to the subjective satisfaction that the detenu was likely to be released on bail in the ground case also in Crime No. 161 of 2014, which shows the total non-application of mind on the part of the detaining authority.

6. In the facts and circumstances of the present case, it is improper to consider the adverse case, in Crime No. 47 of 2013, wherein the detenu was released on bail on the ground of mercy, similar to the ground case, thereby, the detenu has lost his valuable right to make an effective representation to the authorities concerned.

7. In the light of the above the impugned order of detention is vitiated and the same is liable to be quashed.

8. In the result, this Habeas Corpus Petition is allowed. 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/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

msk

To

- 1.District Collector and District Magistrate,
Erode District,
Erode.
2. The Principal Secretary
to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009
3. The Superintendent,
Central Prison, Coimbatore.
4. The Joint Secretary to Government
Public (law and order)
Fort Saint George, Chennai-9
- 5.The Public Prosecutor,
High Court, Chennai.

1 cc to M/s. Giridhar and Sai Associates, Sr. 29338

H.C.P.No.126 of 2015

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