

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.08.2015

Coram

THE HON'BLE DR.JUSTICE S.TAMILVANAN
and
THE HON'BLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1319/2015

V.Bharath

... Petitioner

-vs-

1.The State of Tamil Nadu,
rep. by its Secretary,
Department of Prohibition & Excise,
Fort St. George, Chennai-600 009.

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

... 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 S.C. No.12/2015 dated 24.03.2015 on the file of the second respondent herein and quash the same as illegal and further direct the respondents to produce the detenu Ashok, son of Vasanthappa, aged about 25 years, now confined at Central Prison, Salem before this Court and set him at liberty.

For petitioner : Mr.R.Sankarasubbu

For Respondents: Mr.M.Maharaja, APP

सत्यमेव जयते
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 in S.C. No.12/2015 dated 24.03.2015 whereby the brother of the petitioner, by name, Ashok, son of Vasanthappa, aged about 25 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 the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he mainly focused his arguments on the ground that non application of mind on the part of the detaining authority.

3. Learned counsel appearing for the petitioner submitted that the detenu was remanded in the ground case in Cr.No.33/2015 and the Adverse Cases 2, 4 and 5 in Cr.Nos.642/2013, 543/2015 and 457/2014 registered by Hosur Town Police Station, Mathigiri Police Station and Hudco Police Station respectively and he was granted bail in the said cases in CrI.MP.Nos.854/2015, 860/2015, 861/2015 and 872/2015 on 18.03.2015. But, he is yet to offer sureties as on the date of passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the said cases, without relying upon any similar case. He adds that absence of mentioning any similar case would vitiate the order of detention. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind.

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 seen from paragraph 4 of the grounds of detention, detenu was remanded in the ground case in Cr.No.33/2015 and the 2nd, 4th and 5th Adverse Cases in Cr.Nos.642/2013, 543/2015 and 457/2014 registered by Hosur Town Police Station, Mathigiri Police Station and Hudco Police Station respectively and he was granted bail in the said cases in CrI.MP.Nos.854/2015, 860/2015, 861/2015 and 872/2015 on 18.03.2015. But, he is yet to offer sureties as on the date of passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the said cases, without relying upon any similar case. This would show that the Detaining Authority passed the order of detention mechanically and without application of mind and the facts do not justify the detention. Therefore, the impugned order is passed on mere Ipse-dixit and the order of detention 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 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

vga
To

1. The Secretary, State of Tamil Nadu,
Department of Prohibition & Excise,
Fort St. George, Chennai-600 009.

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

3. The Public Prosecutor
High Court, Madras.

4. The Joint Secretary to Government,
Public (law & order), Fort St. George, Chennai-9

5. The Superintendent of Central Prison
Salem.

सत्यमेव जयते

H.C.P.No.1319/2015

GJ(CO)
EU 26.08.15

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