

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.1405/2015

Maheswari

...Petitioner

-vs-

1.The Secretary to Government
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai,
Vepery,
Chennai-600 007.

...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 23.03.2015 in Memo No.274/BCDFGISSSV/2015 against petitioner's brother, the detenu herein, now confined at Central Priosn, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu Prakash @ Rowdy Prakash, S/o.Arumugam, aged about 31 years, before this Court and set him at liberty.

For petitioner : Mr.T.V.Somasundaram

For Respondents : Mr.M.Maharaja, APP

WEB COPY

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 Memo No.274/BCDFGISSSV/ 2015 dated 23.03.2015 whereby the brother of the petitioner, by name, Prakash @ Rowdy Prakash, S/o.Arumugam, aged about 31 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 for the petitioner submits that the detention order was passed on 23.03.2015, but, the remand extension order was supplied to the detenu only on 26.03.2015 i.e. after a delay of three days, which has deprived the detenu in making effective representation to the authorities concerned and therefore, on this sole ground, the detention order is liable to be quashed.

4.We have heard the learned Additional Public Prosecutor on the above submission made by the learned counsel for the petitioner.

5.A perusal of the detention order passed by the detaining authority would show that the same was passed on 23.03.2015. As evidenced from the booklet, in particular page No.129, it is seen that the remand extension order dated 13.03.2015 was furnished to the detenu only on 26.03.2015, after a delay of three days in passing of the detention order, which amounts to infringement of right ensured under Article 22(5) of the Constitution of India, would vitiate the order of detention.

6.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.

7. 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-II)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Secretary to Government
Home, Prohibition & Excise Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai-600 007.

3.The Public Prosecutor
High Court, Madras.

4.The Superintendent of Central Prison
Puzhal, Chennai.

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

H.C.P.No.1405/2015

VSN (CO)
PSI (26.08.2015)

WEB COPY