

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2015

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1414/2015

G.Sushmita

.. Petitioner /Daughter
of the Detenue

Vs

1.The Secretary to the Government
State of Tamil Nadu
Home, Prohibition & Excise [XVI] Department
Fort St George, Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Chennai Police, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 21.04.2015 in his office Ref.No.341/BCDFGISSV/2015, against the petitioner's father, by name Thiru Anand Kumar, son of Prabakar, aged about 47 years, now confined at Central Prison, Puzhal, Chennai and to set aside the same and direct the respondents to produce the above said detenu before this Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan
For Respondents : Mr.M.Maharaja,APP

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 2nd respondent vide Proceedings in Ref.No.341/BCDFGISSV/2015 dated 21.04.2015, whereby the father of the petitioner by name Anand Kumar, son of Prabakar, aged about 47 years, was ordered to be detained under the provisions of 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.E.Kannadasan, 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 Anand Kumar, surrendered before the Court concerned on 01.04.2015 and his remand was extended periodically till 04.05.2015. Whereas, in the Booklet furnished, it is seen that the detenu's remand was extended till 20.04.2015 and on 20.04.2015 he was neither produced before the Court nor through Video Conferencing and hence, the case was merely adjourned to 04.05.2015 and that there is no indication of extension of remand till 04.05.2015. 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.5 [paragraph No.2], it has been stated by the Detaining Authority as follows:-

"Later Tr.Anand Kumar was surrendered before the learned XI Metropolitan Magistrate Court, Saidapet on 01.04.2015 and remanded to judicial custody and lodged at Central Prison, Puzhal, Chennai as remanded prisoner. His remand was extended periodically till 04.05.2015."

But, a verification of the Remand Order [in English version] furnished in page No.169, would show that the detenu was produced before the Court through Video Conferencing on 06.04.2015 and the remand was extended till 20.04.2015 and on 20.04.2015, it has been stated that the detenu was not produced either before the Court or through Video Conferencing and the matter was adjourned to 04.05.2015. 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

True Copy

Sub Assistant Registrar

AP
To

1.The Secretary to the Government
State of Tamil Nadu
Home, Prohibition & Excise [XVI] Department
Fort St George, Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Chennai Police, Chennai.

3.The Superintendent of Central Prison
Puzhal, Chennai.

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

5.The Public Prosecutor, High Court, Madras.

1 cc to Mr..E.Kannadasan , Advocate Sr.No.36820

msm(co)pmk.12.8.2015

H.C.P.No.1414/2015