

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

CORAM

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

H.C.P.No.1465/2015

Pitchaiammal

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to the Government,
Home, Prohibition & Excise Department
Fort St. George, Chennai 600 009.

2.The District Collector & District Magistrate
Nagapattinam District,
Nagapattinam.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records relating to the proceedings of the 2nd respondent herein in C.O.C.No.30 of 2015 dated 25.04.2015 and quash the same and produce the detenu Tmt.Mayilambal, age 37, W/o.Arokkiyaraj, TPDA No.993 now detained in Special Prison for Women, Tiruchirappalli before this Court and set her at liberty.

For Petitioner : M/s.K.M.Vijayan Associates

For respondents : Mr.M.Maharaja, APP

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 C.O.C.No.30/2015 dated 25.04.2015, whereby the detenur herein, viz., Tmt.Mayilambal, wife of Arokkiyaraj, aged about 37 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 her as a "BOOTLEGGER".

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 detenu has been in remand in the ground case [Cr.No.233/2015] registered by Mayiladuthurai Police Station and the bail application filed by her in the ground case before the learned Judicial Magistrate No.I, Mayiladuthurai in Cr.MP.No.2991/2015 was dismissed on 13.04.2015. Another bail application filed by the detenu before the learned Sessions Judge, Nagapattinam in Cr.MP.No.939/2015 was pending as on the date of the passing of the detention order. Even though a reference was made by the detaining authority about the pending of the bail application filed by the detenu in the ground case, he has further stated that there is real and imminent possibility of the detenu coming out on bail by filing a bail application before the Higher Court. This is indicative of the non-application of mind on the part of the Detaining Authority and hence, submitted that the detention order is vitiated and the same is liable to be quashed.

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 evidenced from paragraph 6 of the Grounds of Detention placed before us, the detenu was arrested in the ground case [Cr.No.233/2015] registered by Mayiladuthurai Police Station and the bail application filed by her in the ground case before the learned Judicial Magistrate No.I, Mayiladuthurai in Cr.MP.No.2991/2015 was dismissed on 13.04.2015. Another bail application filed by the detenu before the learned Sessions Judge, Nagapattinam in Cr.MP.No.939/2015 was pending as on the date of the

passing of the detention order. Even though the bail application filed by the detenu in the ground case was pending, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail by filing bail application before the Higher Court. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

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 her presence is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cse

To

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

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2.The District Collector & District Magistrate
Nagapattinam District,
Nagapattinam.

3.The Public Prosecutor,
High Court, Madras.

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

5.The Superintendent,
Special Prison for Women,
Tiruchirappalli.

1 CC to M/s.K.M.Vijayan Associates, Advocate SR.No. 46430

H.C.P.No.1465/2015

KU (CO)
PSI (24.09.2015)



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