

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2015

C O R A M

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

H.C.P.No.1472 of 2015

Chandrasekar

...Petitioner

Vs

1. The Principal Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat, Chennai - 9.
2. The Commissioner of Police,
O/o.The Commissioner of Police,
Salem City, Salem.
3. The Inspector of Police,
Annadhanapatty Police Station,
Salem District.

...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 entire records connected with the detention order in C.M.P.No.12/ Goonda/Salem City/2015 dated 21.1.2015 on the file of the second respondent and quash the same and direct the respondents to produce the body and person of the petitioner's son namely Sathish @ Guru, son of Chandrasekar, aged about 31 years now confined at Central Prison, Salem before this Court and set him at liberty forthwith.

For Petitioner : Mr.A.Raja Mohamed

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 second respondent vide C.M.P.No.12/Goonda/Salem City/2015, dated 21.01.2015, whereby the detenu/son of the petitioner herein, by name, Sathish @ Guru, Son of Chandrasekar, male, aged about 31 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual 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.A.Raja Mohamed, 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.Learned counsel appearing for the petitioner submitted that the Detaining Authority has placed reliance on a similar case wherein the accused Veerappan @ Vinothkumar was released on bail by the learned Principal Sessions Judge, Salem, in C.M.P. No.3972/2014 on 03.11.2014 for the offences u/s.392, 397 and 506(ii) IPC in the case in Cr.No.555/2014 on the file of Hasthampatty Police Station, to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case wherein the bail application filed is pending. But, the said similar case is not at all a similar case to the ground case of the detenu. 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 No.5 of the Grounds of Detention, the detenu has not filed any bail application in respect

of the ground case (Crime No.1272/2014) but his relative is taking efforts to move bail application. It is also further evidenced from the said paragraph that a reference was made to a similar case registered by the Hasthampatty Police Station in Cr.No.555/2014, wherein bail was granted to the accused Veerappan @ Vinothkumar by the learned Principal Sessions Judge, Salem, in C.M.P. No.3972/2014 on 03.11.2014. On a perusal of the Booklet/Paper Book placed before this Court, it is seen that the period of incarceration after which the accused got bail in the said similar case, is not much longer period than the one during which the detenu was in custody in the ground case. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order. Any bail applications moved by the detenu in the ground case or in the adverse case, necessarily would have to be considered by the Court concerned solely on merits.

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(LA)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Secretariat,
Chennai - 9.
 2. The Commissioner of Police,
O/o. The Commissioner of Police,
Salem City, Salem.
 3. The Inspector of Police,
Annadhanapatty Police Station,
Salem District.
 4. The Superintendent,
Central Prison, Salem.
 5. The Public Prosecutor,
High Court, Chennai.
 6. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.
- 1 CC to Mr.S.M.A. Jinnah, Advocate SR.No. 37215

SCD (CO)
PSI (11.08.2015)

H.C.P.No.1472 of 2015

सत्यमेव जयते

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