

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM
H.C.P.No.1496/2015

Kasiammal

.. 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-7.

.. 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 second respondent dated 10.04.2015 in BCDFGISSSV No.316/2015 against petitioner's son, the detenu herein, now confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu Thiru.Gnanam @ Gnanasekar, son of Arumugam, aged about 29 years, before this Court and set him at liberty.

For Petitioner : Mr.P.Banupriya

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 BCDFGISSSV No.316/2015 dated 10.04.2015, whereby the detenu, by name Gnanam @ Gnanasekar, son of Arumugam, aged about 29 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, 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 was in remand in the ground case [Cr.No.739/2015] and in the adverse cases [Cr.Nos.353/2014, 369/2014, 536/2014, 539/2014, 1016/2014, 1232/2014, 2003/2014, 2004/2014 and 2346/2015] registered by D2 Anna Salai Police Station and the bail application filed by the detenu in the ground case [Cr.No.739/2015] on the file of the Principal Sessions Court, Chennai in CrI.MP.No.4030/2015 is pending. Further, the Detaining Authority has stated that in the adverse cases, the relatives of the detenu has filed bail applications and the same are pending. But, the Detaining Authority has not furnished the bail application numbers and the Courts concerned in which the bail applications are pending as on the date of passing of the detention order. This is indicative of total non-application of mind on the part of the Detaining Authority. Thus, the detention order is vitiated on this sole ground 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. A perusal of the Grounds of Detention, in particular, paragraph 4, would show that the detenu has been remanded in the ground case [Cr.No.739/2015] as well as in the adverse cases [Cr.Nos.353/2014, 369/2014, 536/2014, 539/2014, 1016/2014, 1232/2014, 2003/2014, 2004/2014 and 2346/2015] and the bail application filed by the detenu in the ground case [Cr.No.739/2015] on the file of the Principal Sessions Court, Chennai in CrI.MP.No.4030/2015 has been pending as on the date of passing of the detention order. Further, it is seen that the relatives of the detenu has filed bail applications in the adverse cases and the same are pending. But, the Detaining Authority has not furnished the relevant details, viz., the petition numbers in respect of the Miscellaneous petitions filed; names of the concerned Courts before which the petitions were filed etc. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

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 passed by the 2nd 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

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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-7.
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.

सत्यमेव जयते

H.C.P.No.1496/2015

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pmk.16.9.2015

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