

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.10.2015

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THE HON'BLE DR.JUSTICE S.TAMILVANAN
and
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

H.C.P.No.1511/2015

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... Petitioner

-vs-

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Chennai City.

... 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 09.06.2015 in Memo No.437/BCDFGISSSV/2015 against the petitioner's husband Nagamani, male, aged 37 years, S/o.Solai, now confined at Central Prison, Puzhal II, Chennai and to set aside the same and to direct the respondents to produce the detenu before this Court and to set him at liberty.

For petitioner : Mr.S.Senthil Vel

For Respondents : Mr.M.Maharaja, APP

O R D E R

(Order of the Court made by S.TAMILVANAN,J.)

Challenge is made to the order of detention passed by the second respondent in Memo No.437/BCDFGISSSV/2015 dated 09.06.2015 whereby the husband of the petitioner, by name, Nagamani, male, aged 37 years, S/o.Solai, 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 appearing for the petitioner submitted that the detenu was remanded in the ground case in Cr.No.811/2015 registered by S-7 Madipakkam Police Station and in the Adverse Cases 1 to 10 in Cr.Nos.1854/2014, 787/2014, 2680/2014, 2792/2014, 87/2015, 442/2015, 577/2015, 585/2015, 651/2015 and 677/2015 registered by S-7 Madipakkam Police Station, S-8 Adambakkam Police Station and S-9 Pazhavanthangal Police Station respectively and he was granted bail in the 3rd, 6th, 7th, 8th, 9th and 10th adverse cases in Crime Nos.2680/2014, 442/2015, 577/2015, 585/2015, 651/2015 and 677/2015 and in the ground case in Crime No.811/2015 by the learned Judicial Magistrate, Alandur, Chennai in CrI.M.P.Nos. 3995/2015, 3998/2015, 3996/2015, 3999/2015, 4301/2015, 3997/2015 and 4276/2015. But, he is yet to offer sureties as on the date of passing of the detention order. However, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the said cases by relying upon his own adverse cases registered at S-7 Madipakkam Police Station Cr.No.2680/2014, 442/2015, 577/2015, 585/2015, 651/2015 and 677/2015 registered under Sections 457, 380 IPC wherein bail was granted to the detenu in CrI.M.P.Nos.3995/2015, 3998/2015, 3996/2015, 3999/2015, 4301/2015 and 3997/2015 by the learned Judicial Magistrate, Alandur, Chennai. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that is likelihood of the detenu coming out on bail in the said cases by relying upon his own adverse cases is a mere ipse dixit without any cogent materials.

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 seen from paragraph 4 of the grounds of detention, detenu was remanded in the ground case in Cr.No.811/2015 and in the 1st to 10th Adverse Cases in Cr.Nos.1854/2014, 787/2014, 2680/2014, 2792/2014, 87/2015, 442/2015, 577/2015, 585/2015, 651/2015 and 677/2015 registered by S-7 Madipakkam Police Station, S-8 Adambakkam Police Station and S-9 Pazhavanthangal Police Station respectively and he was granted bail in the 3rd, 6th, 7th, 8th, 9th and 10th adverse cases in Crime Nos.2680/2014, 442/2015, 577/2015, 585/2015, 651/2015 and 677/2015 and in the ground case in Crime No.811/2015 by the learned Judicial Magistrate, Alandur, Chennai in CrI.MP.Nos. 3995/2015, 3998/2015, 3996/2015, 3999/2015, 4301/2015, 3997/2015 and 4276/2015. But, he is yet to offer sureties as on the date of passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the said cases, merely relying upon his own adverse cases. This would show that the Detaining Authority passed the order of detention mechanically and without application of mind and the facts do not justify the detention. Therefore, the impugned order is passed on mere Ipse-dixit and the order of detention 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 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

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police,
Chennai City.
- 3.The Public Prosecutor
High Court, Madras.
- 4.The Superintendent of Central Prison
Puzhal, Chennai.
- 5.The Secretary to Government
Public (Law & Order)
Fort.St.George, Chennai.

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cp 16/10/2015

H.C.P.No.1511/2015



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