

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.1574/2015

Prabhu

...Petitioner

Vs.

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

2.The District Collector and District Magistrate,
Salem District,
Salem.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records relating to the impugned detention order made in Memo No.CMP No.14/Goonda/C2/2015 dated 11.04.2015 on the file of the second respondent herein and quash the same as illegal and direct the respondent to produce the detneu Murugan son of Ganesan aged about 33 years residing at Anaikal Medu, Thulukanur, Attur, Salem District, now confined at Central Prison, Salem before this Court and set him at liberty.

For Petitioner

:

Mr.M.Rajendiran

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.M.P.No.14/Goonda/C2/2015 dated 11.04.2015, whereby the detenu herein, viz., Murugan, son of Ganesan, aged about 33 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 has been in remand in the 2nd adverse case [Cr.No.140/2015] and in the ground case [Cr.No.142/2015] registered by Attur Police Station and the bail application filed by him in the ground case before the learned Principal Sessions Judge, Salem in CrI.MP.No.779/2015 was dismissed on 20.03.2015. Again, he filed bail application before this Court in CrI.OP.No.7954/2015 and the same was pending as on the date of the passing of the detention order. Though the detenu was remanded in respect of the 2nd adverse case, the detaining authority has neither stated about the same nor made any mention whether the detenu has filed any bail application in the said case or whether he has been granted bail in that case. 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.A perusal of the booklet furnished to the detenu, it is seen that the detenu has been in remand in the 2nd adverse case [Cr.No.140/2015] and in the ground case [Cr.No.142/2015] registered by Attur Police Station and the bail application filed by him in the ground case before the learned Principal Sessions Judge, Salem in CrI.MP.No.779/2015 was dismissed on 20.03.2015. Again, he filed bail application before this Court in CrI.OP.No.7954/2015 and the same was pending as on the date of the passing of the detention order. Though the detenu was arrested and remanded in respect of the 2nd adverse case, the Detaining Authority has not stated as to whether the detenu has filed any bail application in the said case or whether the detenu has been granted bail. 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 his presence is required in connection with any other case.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

cse

To

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

2.The District Collector and District Magistrate,
Salem District, Salem.

3.The Public Prosecutor,
High Court, Madras.

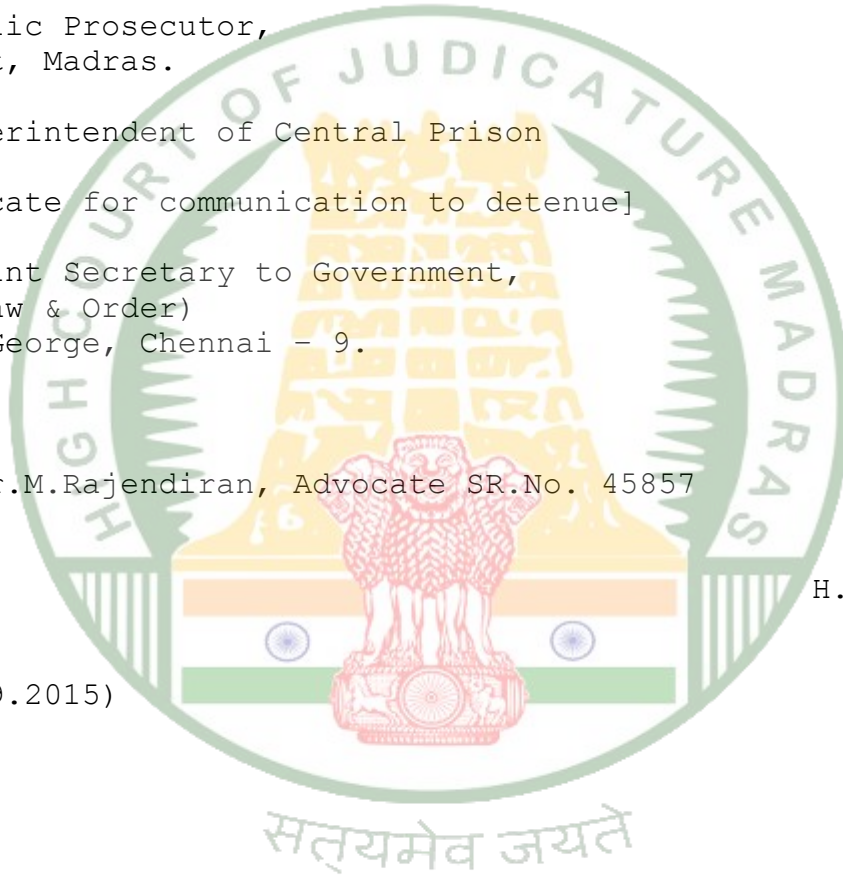
4.The Superintendent of Central Prison
Salem.
[In duplicate for communication to detenue]

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

1 CC to Mr.M.Rajendiran, Advocate SR.No. 45857

H.C.P.No.1574/2015

TS (CO)
PSI (10.09.2015)



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