

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

CORAM

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

H.C.P. NO.1648 OF 2015

Sornavel Pillai ... Petitioner

Vs.

1.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruppur City.

2.State Represented by
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus, calling for the records in Memo No.C.No.29/G/ISTPR/2015 dated 08.06.2015 passed by the first respondent, set aside the same and direct the respondents to produce the detenu, Kanagu @ Kanagaraj, S/o.Sornavel Pillai, aged 29 years, TPDA No.528, who is now detained in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Ms.A.R.Sindhu

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

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 first respondent vide Proceedings in Memo No.C.No.29/G/ISTPR/2015 dated 08.06.2015, whereby the father of

the petitioner/the detenu herein, viz., Kanagu @ Kanagaraj, S/o.Sornavel Pillai, aged 29 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, M/s.A.R.Sindhu, the learned counsel appearing for the petitioner, confines her 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 in Crime No.488 of 2015 for the offences under Sections 392 r/w 397 IPC on the file of North Police Station, Tiruppur City and the bail application moved by the detenu in the said ground case before the learned Judicial Magistrate No.I, Tiruppur in CrI.M.P.No.714 of 2015 was granted bail to the detenu but he is yet to produce the sureties. But the detaining authority has arrived at the subjective satisfaction by relying upon the similar case, in which the accused M.Venugopal was released on bail by the learned Principal District and Sessions Judge, Coimbatore in Cr.M.P.No.1928/2013 dated 13.08.2013 for the offences under Sections 392 r/w.397 and 506(ii) IPC. The said similar case is not that of the co-accused of the detenu. 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 case by relying upon a similar case 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 evidenced from paragraph 8 of the grounds in the order of detention, the detenu is in remand in the ground case in Crime No.488 of 2015 for the offences under Sections 392

r/w 397 IPC on the file of North Police Station, Tiruppur City and the bail application moved by the detenu in the said ground case before the learned Judicial Magistrate No.I, Tiruppur in CrI.M.P.No.714 of 2015 was granted bail to the detenu. But, he is yet to offer sureties as on the date of passing of the detention order. Merely placing reliance on a similar case, wherein, the accused was granted bail, is not sufficient to pass an order of detention and the said similar case is not that of the co-accused of the detenu. 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 case, merely relying upon a similar case. 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. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail application moved by the detenu in the ground case or in the adverse cases, 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.

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ASSISTANT REGISTRAR (Cs-IV)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

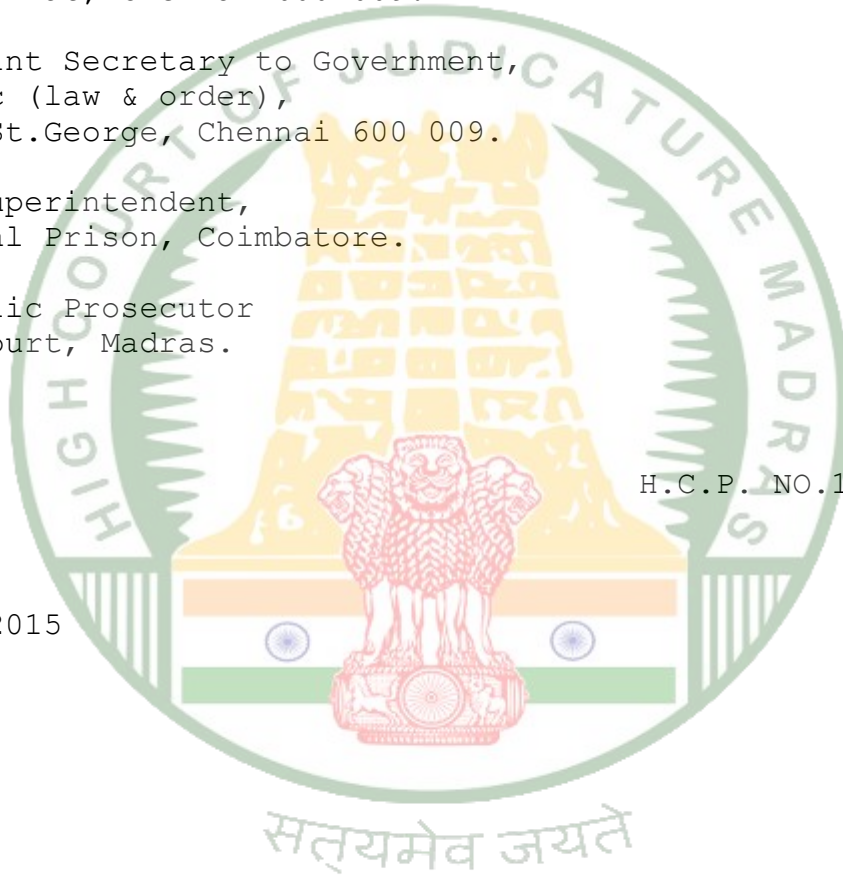
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To

- 1.The Commissioner of Police,
Office of the Commissioner of Police,
Tiruppur City.
- 2.State Represented by
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
3. The Joint Secretary to Government,
Public (law & order),
Fort St.George, Chennai 600 009.
4. The Superintendent,
Central Prison, Coimbatore.
- 5.The Public Prosecutor
High Court, Madras.

H.C.P. NO.1648 OF 2015

CO-ALA
JD 29/10/2015



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