

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2015

CORAM

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

H.C.P.No.1683/2015

S.Selvaraj

.. Petitioner

Vs

1.The State of Tamil Nadu,
rep. by the Secretary to Government,
Prohibition & Excise Department,
Chennai 600 009.

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

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a WRIT OF HABEAS CORPUS calling for the records relating to the order passed by the second respondent in C3/D.O./29/2015 dated 03.07.2015 and quash the same and produce the detenu Kannadi @ Sivaprakasam, son of Selvaraj, now confined in Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.M.V.Muralidaran

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

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 C3/D.O./29/2015 dated 03.07.2015, whereby

the son of the petitioner/detenu herein, by name, Kannadi @ Sivaprakasam, son of Selvaraj, 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 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 ground case in Cr.No.92/2015 for the offence under Section 341, 353, 506(ii), 392 r/w.397 IPC registered by Muthandikuppam Police Station and the bail application filed by him in the ground case before the learned District Sessions Judge, Cuddalore in Crl.M.P.No.2844/2015 was pending as on the date of the passing of the detention order. However, in the booklet furnished to the detenu, the detaining authority has not furnished the copy of the above said order viz. Crl.M.P.No.2844/2015 to the detenu, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention. 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 ground case is a mere ipse dixit without any cogent materials.

4. We have heard the learned Additional Public Prosecutor on the above submission made by the learned counsel for the petitioner.

5. A perusal of the booklet furnished to the detenu, would reveal that the detaining authority has not furnished the copy of the bail order, referred in the grounds of detention, wherein bail application filed by the detenu before the learned District Sessions Judge, Cuddalore in Crl.M.P. No.284/2015 is pending. This non furnishing of relevant materials to the detenu has deprived him on making effective representation, which amounts to infringement of right ensured under Article 22(5) of the Constitution of India, would vitiate the order of detention.

6.For the aforesaid reason, the impugned detention order passed by the second respondent is quashed and the Habeas Corpus Petition is allowed. The detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/
ASSISTANT REGISTRAR (CS-IV)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

vga

To

1.The Secretary to Government,
Prohibition & Excise Department,
Chennai 600 009.

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

3.The Public Prosecutor, High Court, Madras.

4.The Superintendent of Central Prison, Cuddalore.

5.The Joint Secretary to Government,
Public (law & order),
Fort St.George, Chennai 600 009.

+1 CC to MR.M.V.Muralidaran Advocate. SR.NO. 58511

सत्यमेव जयते

H.C.P.No.1683/2015

CO-MP

JD 09/12/2015

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