

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.1694/2015

Apsara Banu

.. Petitioner

Vs

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

2.The Commissioner of Police,
Salem City, Salem.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records pertaining to the order of detention dated 09.06.2015 passed by the second respondent in C.M.P. No.55/Goonda/Salem City 2015 quash the same and produce the detenu Basha @ Bathushamaideen, aged about 26 years, S/o.Rukman Ali, now confined in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.S.Manoharan

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

ORDER

[Order of the Court 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.55/Goonda/Salem City 2015 dated 09.06.2015, whereby the son of the petitioner/ detenu, by name, Basha @ Bathushamaideen, aged about 26 years, S/o.Rukman Ali, 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, Mr.S.Manoharan, 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.136/2015 for the offence under Sections 341, 392 r/w.397, 427 and 506(ii) IPC registered by Annadanapatty Police Station and in the 2nd adverse case in Cr.No.86/2015 for the offence under Sections 392 IPC registered by Ammapet Police Station and the bail application filed by the detenu in Crime No.86/2015 was pending and in the ground case in Cr.No.136/2015 was dismissed as on the date of the passing of the detention order. But the detaining authority has not furnished the relevant Miscellaneous Petition Number of the court concerned and the date on which the bail petition was dismissed. 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 grounds of detention in particular para No.5 would show that the detaining authority has stated as follows:

"I am aware that Thiru Basha @ Bathushamaideen is in remand for the cases of Ammapet PS Cr.No.86/2015, u/s. 392 IPC and Annadanapatty PS Cr.No.136/2015 u/s.341, 392 r/w.397, 427, 506(ii) IPC and the bail petition filed for the Ammapet PS Crime No.86/2015 is pending and the bail petitions filed for the Annadanapatty PS Crime No.136/2015 were dismissed."

From the above, it is crystal clear that the detaining authority has neither mentioned the M.P. Number nor the date of dismissal and the court concerned in respect of the bail petition filed in the ground case in Crime No.136/2015. 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 II)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government(Home),
Prohibition & Excise Department,
Government of Tamil Nadu,
Fort St George, Chennai-600 009.

2.The Commissioner of Police,
Salem City, Salem.

3.The Superintendent, Central Prison,
Salem.

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1694/2015

RSK(CO)
Eu 28.10.15