

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR. JUSTICE P.N.PRAKASH

H.C.P.No.1780/2015

Jothi

.. Petitioner

Vs.

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

2.The Commissioner of Police
Chennai Police, Chennai.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 10.07.2015 in BCDFGISSSV No.519/2015 against the son of the petitioner detenu Ilavarasan, M/A 25, S/o.Paulraj, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at his liberty.

For Petitioner : Mr.M.Ganesh Babu
For Respondents : Mr.M.Maharaja,APP

ORDER

[Order of the Court was made by R.SUDHAKAR, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No.519/BCDFGISSSV/2015 dated 10.07.2015, whereby the detenu/son of the petitioner, by name, Ilavarasan, M/A 25, S/o.Paulraj, 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 "Immoral Traffic Offender".

2.Though many grounds have been raised in the petition, Mr.M.Ganesh Babu, 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.Learned counsel appearing for the petitioner submitted that the bail application filed by the detenu in respect of the ground case [Cr.No.26/2015] in CrI.MP.No.4637/2015 has been dismissed by the learned Judicial Magistrate, Alandur on 06.07.2015 and the detenu has not filed any further bail application in the said case. But the Detaining Authority, in the Grounds of Detention, has stated that the relatives are taking steps to file further bail application. But, the said factum has not been reflected in the Special Report of the Sponsoring Authority dated 18.07.2015. This is indicative of non-application of mind on the part of the Detaining Authority and thus, the detention order is vitiated on the above sole ground 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.

6.As evidenced from the Grounds of Detention, in particular, paragraph 4, the Detaining Authority has stated that the "Sponsoring Authority has stated that the relatives of Tr.Ilavarasan are taking action to take him on bail in Anti Vice Squad-II, Cr.No.26/2015 by filing another bail application before the appropriate Court...". But, a perusal of the Booklet, in particular, the Special Report of the Sponsoring Authority dated 18.07.2015, it is evident that nothing has been stated by the Sponsoring Authority to the effect of the relatives taking steps pursuant to the dismissal of the earlier bail application filed by the detenu in the ground case by the learned Judicial Magistrate, Alandur, in CrI.MP.No.4637/2015 on 06.07.2015. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

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 ground.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order dated 10.07.2015 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

AP

To

1. The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police
Chennai Police, Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai-66.
4. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1780/2015

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