

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

CORAM

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

H.C.P.No.1824/2015

Mary

..Petitioner

Vs

1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600009.

2.The Commissioner of Police
Chennai Police, Chennai.

Respondents

Prayer: 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 17.07.2015 in Memo No.575/2015 against the son of the petitioner, the detenu Mohan, M/A 22, son of Kannan, 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.K.S.Kaviarasu
For Respondents : Mr.M.Maharaja, APP

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No.575/2015 dated 17.07.2015, whereby the son of the petitioner by name Mohan, son of Kannan, aged 22 years 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.As per the grounds of detention dated 17.07.2015, passed by the second respondent, the detenu came to adverse notice in the following case:

Ground case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	S7 Madipakkam Police Station Cr.No.1179/2015	302 IPC @ 147, 148, 120 [B] & 302 IPC

3.Though many grounds have been raised in the petition, Mr.K.S.Kaviarasu, 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.

4.Learned counsel appearing for the petitioner submitted that the detenu has been implicated in the ground case for the commission of the offence u/s.302 IPC and that the said offence committed by the detenu relates only to the private offence affecting law and order and do not relate to any public disturbance or do not cause any prejudice to the maintenance of public order and that there is no live-link between the activities of the detenu and that of causing disturbance to the public order and tranquility. 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 there is real possibility of the detenu coming out on bail in the ground case, is a mere ipse dixit without any cogent materials. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Apex Court reported in 2008 [3] MLJ [Cri] 924 [SC] [BHUPENDRA Vs. STATE OF MAHARASHTRA AND ANOTHER].

5.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.

6.We have heard the learned counsel for both sides with regard to the facts and citation.

7.As could be seen from paragraph 2 of the Grounds of detention, the offences committed by the detenu in the ground case would not attract section 3[2] of the Tamil Nadu Act 14 of 1982 so as to brand him as a Goonda. The nature of the offence

referred therein would relate only to private offence affecting law and order and not involving any act causing public disturbance or public tranquility. In the instant case, the detenu is said to have committed an offence under section 302 IPC creating law and order problem and not affecting the public order or public peace and tranquility. A perusal of the judgment of the Hon'ble Apex Court, relied on by the learned counsel for the petitioner, would reveal that the Hon'ble Apex Court has vividly dealt with the distinction between "law and order" and the "public order" and though the Apex Court has dismissed the appeal filed by the appellant, upholding the dismissal of the Habeas Corpus Petition by a Division Bench of the Bombay High Court, on the facts of that case, we are of the view that there is no live link between the activities of the detenu committed on the date of occurrence and the basis for passing of the detention order.

8. For better appreciation, the relevant paragraph, viz., para 12, of the judgment of the Hon'ble Apex Court in BHUPENDRA's case [cited supra] is extracted thus:-

".....
12. The true distinction between the areas of law and order and public order lies not merely in the nature or quantity of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case, it might affect specific public order. The Act by itself, is not determinant of its own gravity, In its quality it may not differ from either similar acts, but in its potentiality, that it, in its impact on society, it may be very different."

9. It is 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.

10. In the light of the above facts, we have no hesitation in quashing the order of detention on the above mentioned ground.

11. 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.

12. At this juncture, learned Additional Public Prosecutor submitted that the investigation in Cr.No.1179/2015 has been completed and final report has been filed and the case has been committed to the Court of Sessions in PRC No.42/2015 on the file of the learned Judicial Magistrate, Alandur and that the learned Magistrate has not been able to complete the committal proceedings in view of the fact that one of the accused by name Bala @ Balakrishnan is absconding and that if the detenu's detention order is quashed, he would also resort to the same dilatory tactics and would delay the trial proceedings. It is further submitted that the next date of hearing is on 04.01.2016.

13. Considering the submissions made by the learned Additional Public Prosecutor, this Court directs the detenu Mohan to file an affidavit before the Committal Magistrate, on being released on bail by the regular Court, that he will not abscond and that he will appear and participate in the trial proceedings. On failure to comply with the above direction of this Court by the detenu, the learned Magistrate/Trial Court is entitled to take appropriate action against the detenu in accordance with law as if the conditions have been imposed and the detenu released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

sd/-

Assistant Registrar (Cs-IV)

/TRUE COPY/

Sub-Assistant Registrar

AP

To

1. The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600009.

2. The Commissioner of Police
Chennai Police, Chennai.

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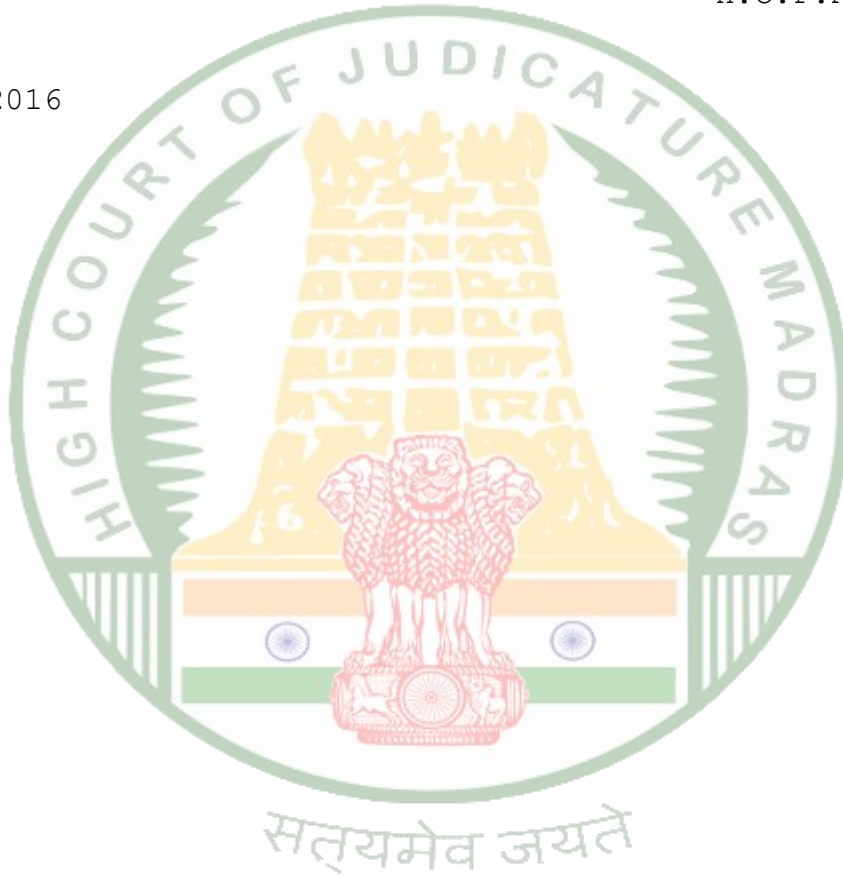
3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent
Central Prison, Puzhal, Chennai

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

H.C.P.No.1824/2015

CO-AK
JD 18/01/2016



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