

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM

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

H.C.P.No.1913/2015

Hamsaveni

..

Petitioner

Vs.

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

2.The District Collector & District Magistrate,
Vellore District, Vellore. .. 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 31.01.2015 in C3.D.O.No.10/2015 against the petitioner husband Arjunan, Male aged 30 years, son of Mani, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For RR 1 & 2 : 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 C3.D.O.No.10/2015 dated 31.01.2015 whereby the detenu/the husband of the petitioner, by name, Arjunan, son of Mani, aged 30 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.Though many grounds have been raised in the petition, Mr.T.Muruganantham, 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 Detaining Authority has relied on a similar case to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out bail in the ground case. But, in respect of the said similar case, viz., the case in Cr.No.247/2014 on the file of Natrampalli Police Station, the accused therein were granted bail by the learned Judicial Magistrate, No.3, Tirupattur in CrI.MP.No.3183/2014. But, in the Booklet, the copy of the Bail Intimation order of the said similar case was furnished to the detenu. This factum of supplying non-essential material particulars would deprive the detenu from making effective representation. Thus, the detention order is vitiated on this ground alone 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.A perusal of the Grounds of Detention, in particular paragraph No.5, it is seen that the Detaining Authority has placed reliance on a similar case to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the adverse cases and in the ground case. But a perusal of the booklet supplied to the detenu, in particular, page No.151, it is evidenced that a copy of the bail intimation order issued by the learned Judicial Magistrate No.3, Tirupathur, was furnished instead of the copy of the bail order in the said similar case in CrI.MP.No.3183/2014. This furnishing of irrelevant and unwanted material particulars has resulted in the detenu being deprived of making an effective representation. 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 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/-
Asst.Registrar (J)

/true copy/
Sub Asst. Registrar

AP

To

- 1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The District Collector & District Magistrate,
Vellore District, Vellore.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Central Prison
Vellore.
5. The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9

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