

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1925/2015

Seeni @ Seenivasan

..

Petitioner

Vs.

1.The District Magistrate & District Collector
Salem District, Salem.

2.The Secretary
State of Tamilnadu
Prohibition & Excise Department
Fort St George, Chennai 600 009.

..

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records in connection with the order of detention passed by the first respondent dated 03.03.2015 in CMP No.11/Goonda/C2/2015, Seeni @ Seenivasan, aged 27 years, son of Kumar, against the petitioner who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty forthwith.

For petitioner

:

Mr.A.K.Manojkumaar

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 first respondent vide Proceedings in CMP.No.11/Goonda/C2/2015 dated 03.03.2015, whereby the detenu/the petitioner herein, by name Seeni @ Seenivasan, son of Kumar, aged 27 years, was ordered to be detained under the provisions of 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 03.03.2015, passed by the first respondent, the detenu came to adverse notice in the following cases:

i)Adverse Cases:

<i>Sl No.</i>	<i>Name of the Police station and Crime No.</i>	<i>Section of law</i>
1	Dharmapuri PS Cr.No.1393/2012	454, 380 IPC
2	Erode North PS Cr.No.74/2014	379 IPC
3	Mettur PS Cr.No.878/2014	457, 380 IPC

(ii) Ground Case:

<i>Sl No.</i>	<i>Name of the Police station and Crime No.</i>	<i>Section of law</i>
1	Mettur PS Cr.No.881/2014	392 r/w 397, 427, 506[ii] IPC

3. Though many grounds have been raised in the petition, Mr.A.K.Manojkumaar, 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 remanded to judicial custody in the 3rd adverse case in Cr.No.878/2015 registered by the Mettur Police Station by way of PT Warrant and that the bail application filed by him in the said case has been dismissed on 07.02.2015 by the learned Judicial Magistrate No.1, Mettur in CMP No.878/2014 and though a mention has been made by the Detaining Authority in respect of the ground case in paragraph 4 of the Grounds of Detention about the non-filing of bail application in the ground case, the factum of the remand of the detenu in the 3rd adverse case in Cr.No.878/2014 and whether the detenu has filed any further bail application has not been reflected in the said paragraph. 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.

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 evidenced from the Grounds of Detention, the detenu was arrested by way of P.T.Warrant in the 3rd adverse case in Cr.No.878/2014 registered by Mettur Police Station and though a mention has been made in paragraph 1 of the Grounds about the dismissal of the bail application in the said case by the Court concerned, neither the said factum of dismissal of the bail application in the 3rd adverse case nor whether the detenu has moved another bail application in the said adverse case in furtherance of the dismissal of the earlier bail petition, has been reflected in paragraph 4 of the Grounds of

Detention and only a reference with regard to the non filing of the bail application in the ground case has been made. When nothing has been stated about the remand of the detenu in the said 3rd adverse case and about the dismissal of the earlier bail application, it is not known whether the detenu has filed any further bail application in the said adverse case or not. If that be so, there is no imminent possibility of the detenue coming out on bail in the said adverse case. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

8.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.

9.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

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AND
P.N.PRAKASH, J.
AP

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the first respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

[R.S., J.] [P.N.P., J.]
18.01.2016

AP

To

1. The District Magistrate & District Collector
Salem District, Salem.

2. The Secretary
State of Tamilnadu
Prohibition & Excise Department
Fort St George, Chennai 600 009.

3. The Public Prosecutor,
High Court, Madras.

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