

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.208/2015

TMT.DEVI .. [PETITIONER]/Wife of the
detenue.

Vs

1 THE SECRETARY TO GOVERNMENT
HOME PROHIBITION AND EXCISE DEPARTMENT
FORT ST GEORGE CHENNAI 600 009.

2 THE COMMISSIONER OF POLICE
CHENNAI CITY VEPPERY
CHENNAI 600 007.

.. [RESPONDENTS]

This Habeas corpus petition filed under Article 226 of the Constitution of India praying for issuance of a WRIT OF HABEAS CORPUS calling for the records in MEMO NO.2226/BCDEFGISSV/2014 dated 18/12/2014 on the file of the 2nd respondent herein and quash the same as illegal and direct the respondents to produce the detenu Mohan, son of Chinnadurai, aged 42 years, now confined at Central Prison, Puzhal, before this Court and set him at liberty.

For petitioner : Mr.R.Sankarasubbu
For respondents : Mr.M.Maharaja
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.TAMILVANAN, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in MEMO NO.2226/BCDEFGISSV/2014 dated 18/12/2014, whereby the husband of the petitioner by name Mohan, son of Chinnadurai, aged 42 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.Though many grounds have been raised in the petition, Mr.R.Sankarasubbu, 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 detenu has been formally arrested and remanded to judicial custody in the 2nd adverse case in Cr.No.2261/2014 registered by the M3 Puzhal Police Station, but the said factum of the remand of the detenu in the 2nd adverse case in Cr.No.2261/2014 has not been reflected in the grounds of detention, more particularly in paragraph 4 of the Detention order. 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.

6.As could be evidenced from the Grounds of Detention furnished before us, the detenu was arrested by way of P.T.Warrant in the 2nd adverse case in Cr.No.2261/2014 registered by M3 Puzhal Police Station and the Arrest Intimation in the said case is also furnished in the Booklet. But the factum of remand of the detenu in the adverse case No.2, viz., in Cr.No.2261/2014, has not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the ground case where the bail application filed by the detenu was pending as on the date of the passing of the detention order before the court concerned. When nothing has been stated about the remand of the detenu in the said adverse case No.2, it is not known whether the detenu has filed any bail application in the said adverse case or not. If that be so, there is no imminent possibility of the detenu 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. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail applications moved by the detenu in the ground case or in the adverse cases, necessarily would have to be considered by the Court concerned solely on merits uninfluenced by the order of this Court.

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/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

AP

To

- 1 THE SECRETARY TO GOVERNMENT
HOME PROHIBITION AND EXCISE DEPARTMENT
FORT ST GEORGE CHENNAI 600 009.
- 2 THE COMMISSIONER OF POLICE
CHENNAI CITY VEPPERY
CHENNAI 600 007.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison
Puzhal, Chennai.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George, Chennai - 9.

+1 cc to Mr. R. Sankarasubbu, Advocate,sr. 34198.

H.C.P.No.208/2015

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