

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN

and

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.217/2015

A.Sudarkani

..Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu
[Home], Prohibition & Excise Department
Fort St George, Chennai-600 009.

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

..Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records pertaining to the order of detention dated 04.01.2015 passed by the 2nd respondent in CMP No.1/Sexual Offender/C2/2015 and quash the same and produce the detenu Anbudurai, aged about 45 years, son of Thangavel, before this Court and set him at liberty the detenu now confined in Central Prison, Salem.

For petitioner : Mr.S.Manoharan
For respondents : Mr.M.Maharaja, Additional
Public Prosecutor

सत्यमेव जयते

O R D E R

[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 CMP No.1/Sexual Offender/C2/2015 dated 04.01.2015, whereby the husband of the petitioner, by name, Anbudurai, aged about 45 years, son of Thangavel, 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 "Sexual Offender".

2.Though many grounds have been raised in the petition, Mr.S.Manoharan, 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 placed reliance on a similar case wherein the accused Boopathi, Snakebabu @ Anandbabu, Anand, Prabakaran and Balakrishnan were released on statutory bail by the learned District Sessions Judge, Mahila Court, in CMP.Nos.258, 259, 261 and 262/2014 on 26.05.2014 for the offences u/s.302 IPC @ 120[b], 450, 450 r/w 34, 363, 366, 302 r/w 34, 404 r/w 34, 201 r/w 302 IPC and section 6 r/w 5 [G] and [M] of the Protection of Children from Sexual Offences Act, 2012 and 376[d] IPC, in the case in Cr.No.102/2014 on the file of Valappady Police Station, to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case wherein the bail application filed was dismissed by the court concerned. But, the said similar case is not at all a similar case to the ground case of the detenu since the accused in the similar case were granted statutory bail u/s.167[2] Cr.P.C., while the investigation in the ground case is pending. 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 and citation.

6.As could be evidenced from paragraph No.3 of the Grounds of Detention, the detenu's bail application filed in the ground case [Cr.No.30/2014] before the learned Sessions Judge, Mahila Court, Salem in CMP.No.668/2014 was dismissed on 24.12.2014 and thereafter, the detenu has not filed any further bail

application in the ground case as on the date of passing of the detention order. It is also further evidenced from the said paragraph that a reference was made to a similar case registered by the Valappadi Police Station in Cr.No.102/2014, wherein bail was granted to the accused persons, viz., Boopathi, Snakebabu @ Anandbabu, Anand, Prabakaran and Balakrishnan, by the learned District Sessions Judge, Mahila Court, in CMP.Nos.258, 259, 261 and 262/2014 on 26.05.2014. But a perusal of the Booklet/Paper Book placed before this Court, in particular, page Nos.111 to 113, it is

seen that the said accused were granted statutory bail under Section 167[2] of Cr.P.C. Such is not the position in the case of the detenu as in the ground case, the investigation is pending. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

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/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

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

H.C.P.No.217/2015

RSK(CO)

EU 03.08.15