

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2015

CORAM

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

H.C.P.No.230/2015

Kavitha

.. Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai-9.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents to produce the petitioner's brother by name Tamilarasan, son of Chellaiya, aged 22 years before this Court, now confined in Central Prison, Coimbatore, set him at liberty and to call for the records pertaining to the order of detention passed in Cr.MP.No.42/G/2014/E1 dated 16.09.2014 passed by the 2nd respondent and set aside the same.

For petitioner : Mr.K.Thenrajan

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

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 Cr.MP.No.42/G/2014/E1 dated 16.09.2014, whereby the brother of the petitioner by name Tamilarasan, son of Chellaiya, aged 22 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.K.Thenrajan, 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 Abdul Sathar was released on bail by the learned District and Sessions Judge, Coimbatore in CMP No.217/2012 on 24.01.2012 for the alleged offences u/s.392 r/w 397 IPC in the case in Cr.No.2768/2011 on the file of the Mettupalayam Police Station, to arrived 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 is pending. But, the said similar case is not at all a similar case to the ground case, as in the case of the similar case, the investigation was completed and charge sheet was filed and hence, bail was granted to the accused Abdul Satthar. On the other hand, the investigation in the ground case is still 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 the paragraph No.5 of the Grounds of Detention, the detenu's bail application filed in the ground case before the learned Principal District and Sessions Judge, Coimbatore in CMP No.2907/2014 was pending 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 Mettupalayam Police Station in Cr.No.2768/2011, wherein bail was granted to the accused Abdul Satthar by the Court concerned. But a perusal of the Booklet/Paper Book placed before this Court, in particular, page No.150 and 151, the bail was granted to the said accused on the ground that the investigation was completed and charge sheet was filed. Such is not the position in the case of the detenu, as the investigation in the ground case in Cr.No.215/2014 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,
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai-9.
- 2.The District Collector & District Magistrate
Coimbatore District, Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Central Prison
Coimbatore.
5. The Joint Secretary to Government Public
(Law & order) Fort St. George, Chennai-9.

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