

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2015

C O R A M

THE HONOURABLE DR. JUSTICE S.TAMILVANAN

and

THE HONOURABLE MR. JUSTICE C.T.SELVAM

H.C.P.No.261 of 2015

S.Amsavalli

...Petitioner/Mother of the  
detenue

Vs

1. The Commissioner of Police,  
Chennai City Police Commissioner Office,  
Vepery, Chennai.

2. The Secretary to Government,  
Home, Prohibition and Excise Department  
Fort St. George, Secretariat,  
Chennai 600 009.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the records of the detention order made in BCDFGISSSV No.2134/2014 dated 11.12.2014 passed by the Commissioner of Police, Chennai, the first respondent herein and set aside the same and direct the respondent to produce the detenue Saravanan son of Somasundaram, aged about 30 years, now confined in Central Prison-II, Puzhal, Chennai before this Court and set the detenu Saravana, son of Somasundaram at liberty.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.M.Maharaja  
Addl. 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 BCDFGISSSV No.2134/2014 dated 11.12.2014, whereby the detenu/the son of the petitioner herein, by name, Saravanan, Son of Somasundaram, male, aged about 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.R.Sivaraman, 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 S.Suresh was released on statutory bail by the learned Judicial Magistrate, Alandur in Cr.MP No.8311/2013 on 29.08.2013 for the offence u/s.341, 294(b), 392, 397, 506(ii) IPC in the case in Cr.No.162/2013 on the file of S-3 Meenambakkam 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 is pending. But, the said similar case is not at all a similar case to the ground case of the detenu. 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.4 of the Grounds of Detention, the detenu's bail application filed in the 2nd adverse case before the learned XVII Metropolitan Magistrate, Saidapet, Chennai in CrI.M.P No.3159 of 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 S-3 Meenambakkam Police Station in Cr.No.162 of 2013, wherein statutory bail was granted to the accused S.Suresh by the Court concerned. But a perusal of the Booklet/Paper Book placed before this Court, in particular, page No.305, the statutory bail was granted under Section 167 of Cr.P.C. to the said accused. Such is not the position in the case of the detenu. 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/-  
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

msk

To

1. The Commissioner of Police,  
Chennai City Police Commissioner Office,  
Vepery, Chennai.
2. The Secretary to Government,  
Home, Prohibition and Excise Department  
Fort St. George, Secretariat,  
Chennai 600 009.
3. The Superintendent of Prison,  
Central Prison, Puzhal,  
Chennai.
4. The Joint secretary to Government  
Public (Law and Order)  
Fort st. George,  
Chennai -9

5. The Public Prosecutor,  
High Court, Chennai.

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