

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2015

CORAM

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

H.C.P.No.313/2015

Palani Petitioner/Junior Paternal Father

Vs.

1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Salem City.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 01.12.2014 in Cr.MP.No.66/Goonda/Salem City/2014, against the petitioner's brother's son Mani, son of Madhu, aged about 26 years, 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.

For Petitioner : Mr.V.Paarthiban
For RR 1 & 2 : Mr.M.Maharaja,APP

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 Cr.MP.No.66/Goonda/Salem City/2014 dated 01.12.2014, whereby the detenu/the son of the petitioner's brother, by name, Mani, son of Madhu, aged about 26 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.V.Paarthiban, 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 stated in the grounds of Detention tha the detenu is in remand in the ground case in Cr.No.607/2014 registered by the Ammapet Police Station and further stated that the two bail applications filed by the detenu were dismissed and the 3rd application filed before this Court was pending as on the date of passing of the detention order. Learned counsel would contend that the Detaining Authority has not furnished the bail application numbers and the Courts concerned which dismissed the bail applications and on which date the petitions were dismissed. The Detaining Authority has not even mentioned the "Criminal Original Petition number" in respect of the bail petition pending on the file of this Court. This is indicative of total non-application of mind on the part of the Detaining Authority. Thus, the detention order is vitiated on this sole ground and the same is liable to be quashed.

4.Per contra, the learned Advocate General 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.A perusal of the Grounds of Detention, in particular, paragraph 5, would show that the detenu has been remanded in the Ground case in Cr.No.607/2014. Further, it is seen that the bail applications filed in the said case were dismissed and the further bail application filed before this Court was pending as on the date of passing of the detention order. But, the Detaining Authority has not furnished the relevant details, viz., the petition numbers in respect of the Miscellaneous petitions filed ; names of the concerned Courts before which the petitions were filed ; and the dates of dismissal etc. But, as evidenced from the booklet supplied to the detenu, it is seen that only the dismissal order of the bail petition in CMP.No.4207/2014 by the learned Principal District and Sessions Judge, Salem on 24.11.2014 ; and the copy of the bail petition filed before this Court is furnished in page Nos.130 to 142, that too, the Criminal Original Petition number is not mentioned. The copy of the earlier order of dismissal of the bail petition by the Court concerned is not furnished in the Booklet. This is indicative of total non-application of mind on the part of the Detaining Authority.

Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

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 ground.

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 the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Salem City.

3.The Superintendent of Central Prison
Salem.

4.The Joint Secretary to Government
Public (Law & Order)
Fort St.George, Chennai-9

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.313/2015

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