

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2015

CORAM

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

H.C.P.No.423/2015

A.Vijayakumar

... Petitioner

Vs.

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

2.The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records connected the order of the detention passed by the second respondent in BCDFGISSSV No.92 of 2014 dated 14.11.2014 consequently directing the respondents to produce the detainee namely the petitioner's mother Selvi, W/o.Arumugam, aged about 40 years, who is presently detained in the Central Prison, SPECIAL PRISON FOR WOMEN, PUZHAL, CHENNAI to be produced before this Court and to set her at liberty.

For petitioner : Mr.A.Venkatesh

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

WEB COPY

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 BCDFGISSSV No.92 of 2014 dated 14.11.2014, whereby the mother of the petitioner, by name, Selvi, W/o.Arumugam, aged about 40 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 her as a "Bootlegger".

2. Though many grounds have been raised in the petition, Mr.A.Venkatesh, 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 detainee has been arrested and remanded to judicial custody in the 4th adverse case in Cr.No.399/2014 registered by Prohibition Enforcement Wing, Mamallapuram @ Thirukalukundram, but the said factum of the remand of the detainee in the 4th adverse case in Cr.No.399/2014 has not been reflected in the grounds of detention, more particularly in paragraph 5 of the Detention order and only a reference has been made in respect of the ground case. 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 Booklet furnished before us, the detainee was arrested in the 4th adverse case in Cr.No.399/2014 registered by Prohibition Enforcement Wing, Mamallapuram @ Thirukalukundram. But the factum of remand of the detainee in the 4th adverse case viz., in Cr.No.399/2014 has not been reflected in

paragraph 5 of the Grounds of Detention and only a reference has been made in respect of the ground case. When nothing has been stated about the remand of the detainee in the said 4th adverse case, it is not known whether the detainee has filed any bail application in the said adverse case or not. If that be so, there is no imminent possibility of the detainee 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.

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 detainee is directed to be released forthwith unless her presence is required in connection with any other case.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vga

To

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

2.The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram.

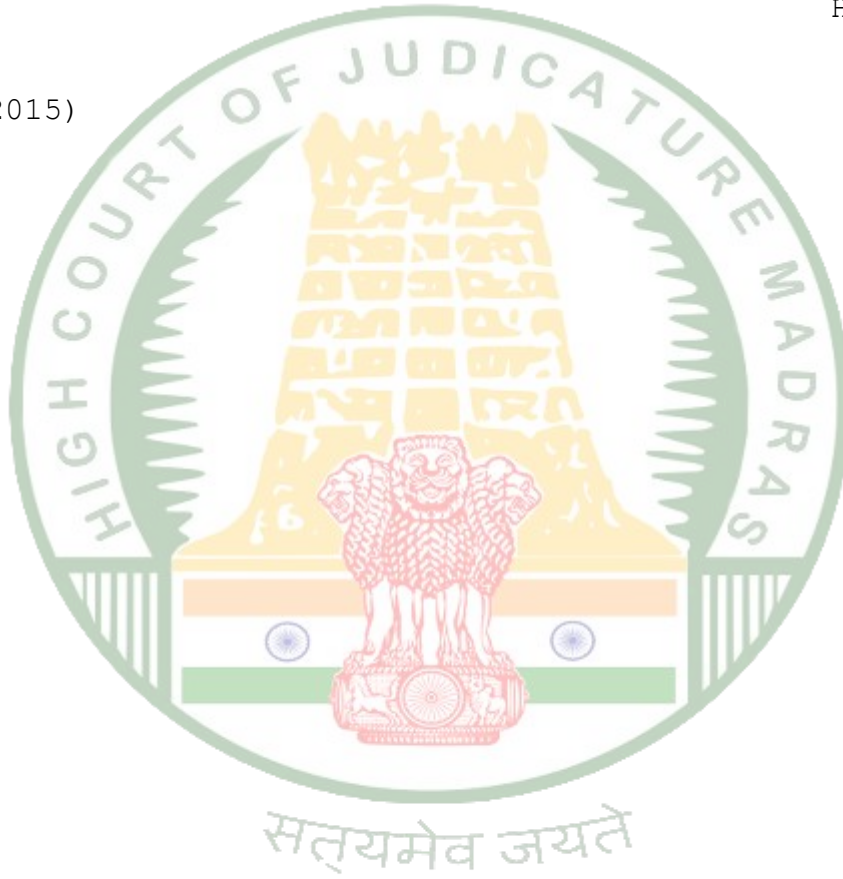
3.The Superintendent, Special Prison for Women,
Puzhal, Chennai.

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.423/2015

MG(CO)
CA(02/07/2015)



WEB COPY