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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.45/2015

Prem Nazir

...Petitioner

Vs.

1. The State of Tamil Nadu
Secretary to Government,
Home, Prohibition & Excise Department
Fort St George, Chennai-600 009.
2. The Commissioner of Police
O/o.The Commissioner of Police
[Goondas Section] Greater Chennai
Egmore, Chennai 600 008.
3. The Superintendent of Central Prison
Central Prison,
Puzhal, Chennai 600 066.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records relating to the detention order in BCDFGISSV No.2159/2014 dated 15.12.2014 passed by the 2nd respondent herein and quash the same and direct the respondents to produce the body of the person of the detenu namely Mohamed Ali Jinnah, [45 years] son of Sherif before this Court, now detained under sub section [2] of 3 of TPDA Act 14 of 1982 in the Central Prison, Puzhal, Chennai and set him at liberty.

For petitioner	:	Mr.S.Palanikumar
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 BCDFGISSV No.2159/2014 dated 15.12.2014, whereby the brother of the petitioner, by name, Mohamed Ali Jinnah, [45 years] son of Sherif, 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".

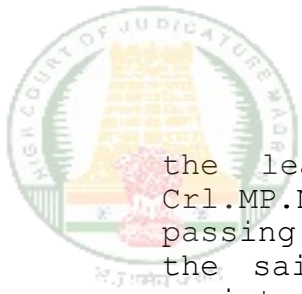
2.Though many grounds have been raised in the petition, Mr.S.Palanikumar, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3.Learned counsel appearing for the petitioner submitted that the Detaining Authority has placed reliance on a similar case wherein the accused Suresh was released on statutory bail by the learned Judicial Magistrate, Alandur, in CrI.MP No.8311/2013 on 29.08.2013 for the offences u/s.341, 294[b], 392, 397, 506[ii] IPC in the case in Cr.No.162/2013 on the file of S3 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 applications filed in the ground case [Cr.No.887/2014] and in the 1st adverse case [Cr.No.862/2014] before



the learned Principal Sessions Judge, Kancheepuram District in CrI.MP.Nos.3550/2014 and 3688/2014 were 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 S3 Meenambakkam Police Station in Cr.No.162/2013, wherein bail was granted to the accused Suresh by the learned Judicial Magistrate, Alandur on 29.08.2013. But a perusal of the Booklet/Paper Book placed before this Court, in particular, page No.283, it is seen that the said accused was granted statutory bail under Section 167[iii] of Cr.P.C. Such is not the position in the case of the detenu as in the ground case and in the 1st adverse 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 also seen that from the Grounds of Detention, in particular, from paragraph 1, the detenu was arrested by way of P.T.Warrant [formal arrest] in the 2nd adverse case in Cr.No.878/2014 registered by S9 Pazhavanthangal Police Station. But the factum of remand of the detenu in the adverse case No.2, viz., in Cr.No.878/2014, has not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the ground case and the 1st adverse case where the bail applications filed by the detenu were pending as on the date of the passing of the detention order before the court concerned. When nothing has been stated about the remand of the detenu in the said adverse case No.2, it is not known whether the detenu has filed any bail application in the said adverse case or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse case. On this ground also, the detention order is vitiated and the same is liable to be dismissed

8.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.

9.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

10.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(CO)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai-600 009.
2. The Commissioner of Police
O/o.The Commissioner of Police
[Goondas Section] Greater Chennai
Egmore, Chennai 600 008.
3. The Superintendent of Central Prison
Central Prison, Puzhal, Chennai 600 066.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

1 CC to Mr.S.Palanikumar, Advocate SR.No. 32579

H.C.P.No.45/2015

BVR (CO)
PSI (10.07.2015)