

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2015

CORAM

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

H.C.P.No.531/2015

Mariammal

.. Petitioner
Mother of the detenu

Vs.

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

2.The Commissioner of Police,
Salem City.

3.The Superintendent,
Central Prison, Salem-7.

.. 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 pertaining to the detention order passed in C.M.P. No.10/Goonda/Salem City/2015 dated 20.01.2015 on the file of the second respondent herein and to set aside the same and to direct the respondents herein to produce the detenu Prabakaran, S/o.Ganesan, aged about 25 years, who is confined in Central Prison, Salem, before this Court and to set him at liberty.

For petitioner : Mr.B.Vasudevan

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 C.M.P. No.10/Goonda/Salem City/2015 dated 20.01.2015, whereby the son of the petitioner, by name, Prabakaran, S/o.Ganesan, aged about 25 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.B.Vasudevan, 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 that the bail application filed in the ground case in Crime No.3/2015 registered by Kitchipalayam Police Station on behalf of the detenu, was dismissed as on the date of the passing of the detention order. But he has not furnished the relevant Miscellaneous Petition Number of the court concerned and the date on which the bail petition was dismissed. 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.A perusal of the grounds of detention in particular para No.5 would show that the detaining authority has stated as follows:

"I am aware that Thiru Prabakaran is in remand for the case of Kitchipalayam PS Cr.No.3/2015, u/s.294(b), 323, 324, 506 (ii) IPC @ into 294(b), 323, 307, 506(ii) IPC and the bail petition filed on behalf of him for the above case is dismissed. Further, it is learnt that the relative of Thiru Prabakaran is taking efforts to move bail application again to take him out on bail for the above said case."

From the above, it is crystal clear that the detaining authority has neither mentioned the M.P. Number nor the date of dismissal and the court concerned in respect of the bail petition filed in the ground case in Crime No.3/2015. 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

To

- 1.The State of Tamil Nadu,
rep. by its Secretary of Government,
Home, Prohibition & Excise Department,
Fort St. George, Chennai-9.
- 2.The Commissioner of Police,
Salem City.
- 3.The Superintendent,
Central Prison, Salem-7.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Central Prison
Salem.
- 5.The Joint Secretary to Government,public (Law&Order),
Fort.st.George,Chennai.

+1 cc to Mr.B.Vasudevan,Advocate (SR.35622)
AP(co)
cp 10.08.2015

H.C.P.No.531/2015