

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.602/2015

P.Muthusamy

... Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Salem City.

... 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.15/Goonda/Salem City/2015 dated 23.01.2015 on the file of the second respondent herein and to set aside the same and to direct the respondents herein to produce the detenu Prathap, S/o.Muthusamy, aged about 26 years, who is confined in Central Prison, Salem, before this Court and to set him at liberty.

For petitioner : Mr.V.Paarthiban

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

सत्यमेव जयते

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.15/Goonda/Salem City/2015 dated 23.01.2015, whereby the son of the petitioner, by name, Prathap, S/o.Muthusamy, aged about 26 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.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 detenu has been in remand in the 3rd Adverse case in Crime No.8/2015 and in the ground case in Crime No.32/2015 registered by Hasthampatty Police Station and the detenu has not moved any bail application in the ground case as on the date of the passing of the detention order. He would also contend that the detaining authority has placed reliance on the statement of the sponsoring authority to the effect that the relatives of the detenu are taking steps to take him out on bail by filing bail application in the ground case. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail application in the ground case. When no bail application is filed, there is no real possibility of the detenu coming out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case and there is imminent possibility of the detenu coming out on bail in the said case. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail in the ground case, is a mere ipse dixit without any cogent materials. In support of his contention, he relies on the judgments of the Hon'ble Apex Court reported in [a] 2006 [1] MLJ [Cr1.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] ; [b]2005 [1] CTC 577 [VELMURUGAN @ VELU Vs. THE COMMISSIONER OF POLICE] and [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] .

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 evidenced from paragraph 5 of the grounds in the order of detention, the detenu is in remand in the ground case [Cr.No.32/2015] and in the 3rd Adverse Case (Cr.No.8/2015) and he has not filed any bail application in the said ground case as on the date of passing of the detention order. Merely stating that steps have been taken on behalf of the detenu by the relatives of the detenu to file bail application in the ground case is not sufficient to pass an order of detention. Excepting recording a statement that the relatives of the detenu are taking steps to file bail application, no other materials are shown as to the steps taken to file bail application in the ground case. When no bail application is filed, there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail in the ground case would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Therefore on this ground also the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

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(CS II)

//True Copy//

Sub Assistant Registrar

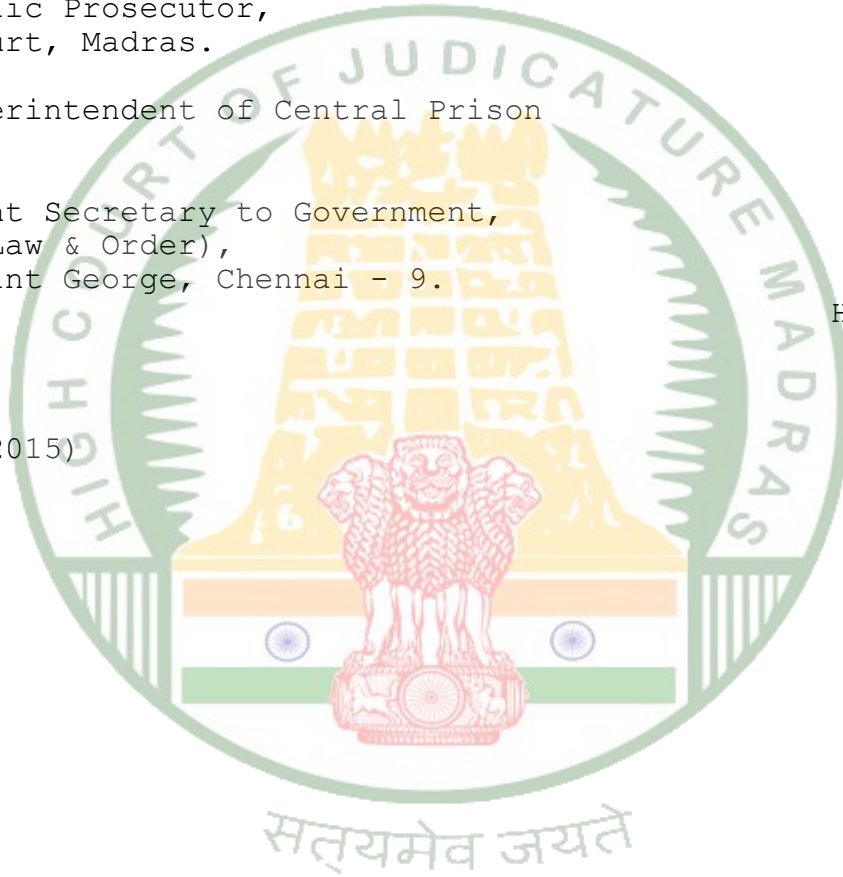
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To

- 1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Fort St. George, Chennai-9.
- 2.The Commissioner of Police,
Salem City.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Central Prison
Salem.
- 5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

H.C.P.No.602/2015

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