



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2015

CORAM

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

H.C.P.No.67/2015

Rajammal

..

Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St George, Chennai.

2.The District Magistrate & District Collector
Coimbatore District, Coimbatore.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in Cr.MP.No.19/D.O./2014/E1 dated 07.07.2014 on the file of the 2nd respondent and quash the detention as illegal and direct the respondents to produce the detenu P.Subramaniam, son of Perumal Chettiar, aged about 60 years, Door No.1/87, Vinayagar Koil Veedhi, Chinna Negamam Post, N.Chandrapuram, Pollachi Taluk, Coimbatore District, now confined at Central Prison, Coimbatore before this Court and set him at liberty forthwith.

For petitioner	:	Prof.M.Udaya Bhanu
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 Cr.MP.No.19/D.O./2014/E1 dated 07.07.2014, whereby the brother of the petitioner by name P.Subramaniam, son of Perumal Chettiar, aged about 60 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 "Drug Offender".



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2. Though many grounds have been raised in the petition, Prof. M. Udaya Bhanu, 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 remanded to judicial custody in the ground case in Cr.No.194/2014 registered by the Negamam Police Station and the bail application filed by the detenu in the ground case in CMP.No.327/2014 before the learned Judge, Essential Commodities Act cases, Coimbatore, was pending as on the date of passing of the detention order. But, the Detaining Authority has stated that there is a real possibility of the detenu coming out on bail "by filing another bail application". Learned counsel would submit that when already a bail application is filed and pending, then the question of filing another bail application for the very same ground case will not arise. 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 5 of the Grounds of Detention, the detenu's bail application filed in the ground case [Cr.No.194/2014] was pending before the learned Judge concerned in CMP.No.327/2014 as on the date of passing of the detention order. But the Detaining Authority, in the very same paragraph, by placing reliance on a similar case, has stated as follows:-

"..... I am also aware that a bail petition was filed on behalf of him before the Essential Commodities Act cases Court, Coimbatore, on 02.07.2014 in CMP No.327/2014 and the same was pending.....hence there is a real possibility of his Thiru Subramaniam, coming out on bail by filing a bail application for the above case before the appropriate court....."

If that be so, the statement made by the Detaining Authority in the above paragraph in the grounds of Detention is indicative of total non-application of mind on the part of the Detaining Authority, which would vitiate the detention order. Further, the detenu would be deprived of making an effective representation on account of these wrong particulars.



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 Secretary to Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St George, Chennai.
- 2.The District Magistrate & District Collector
Coimbatore District, Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Central Prison
Coimbatore.
- 5.The Joint Secretary to Government
Public (L&O) Fort st.George, chennai.

+1 cc to M/s.M.Udaya Bhanu, Advocate,SR.25683.

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