

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.702 of 2015

G.Vadivazhagi
W/o.Govindaraj

.. Petitioner

Vs

1.The State represented by its
The Secretary to Government (Home),
Prohibition and Excise Department,
Government of Tamilnadu,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Salem City, Salem.
Respondents

..

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records of pertaining to the order of detention dated 16.02.2015 passed by the second respondent in C.M.P.No.20/Goonda/Salem City/2015 and quash the same and produce the detenu, G.Suresh Kumar, aged about 43 years, S/o.Govindaraj, before this Court and set him at liberty detenu now confined at Central Prison, Salem.

For Petitioner : Mr.S.Manoharan

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.20/Goonda/Salem City/2015, dated 16.02.2015, whereby the detenu, by name, G.Suresh Kumar, S/o.Govindaraj, aged about 43 years, was ordered to be detained under the provisions of the 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, 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. Though the detaining authority has informed of the relatives of the detenu taking steps towards moving a bail application on his behalf, there is no material in support there regards. This according to the learned counsel appearing for the petitioner is bereft of particulars without cogent materials, which vitiates the impugned order of detention.

3. Per contra, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention.

4. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

5. It is seen that though the detaining authority has informed of the relatives of the detenu taking steps towards moving a bail application on his behalf, there is no material in support there regards. If that be so, the subjective satisfaction arrived at by the detaining authority that there is a possibility of his coming out on bail would be a mere ipse dixit and that would vitiate the order of detention. Therefore, the detention order suffers from infirmity and illegality warranting interference by this Court.

6. 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.

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

Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order 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 (Home),
Prohibition and Excise Department,
Government of Tamilnadu,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Police,
Salem City, Salem.

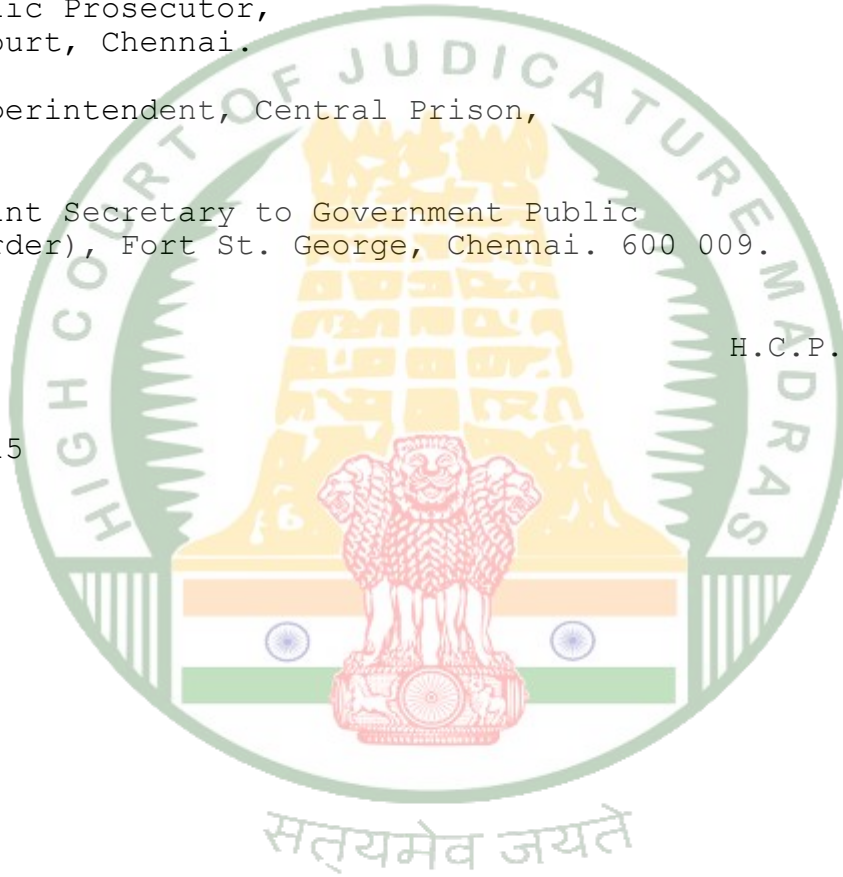
3.The Public Prosecutor,
High Court, Chennai.

4. The Superintendent, Central Prison,
Salem.

5. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai. 600 009.

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