

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2015

CORAM

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

H.C.P.No.740/2015

Samundeeswari

...Petitioner

Vs

1.The Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
State of Tamilnadu,
Secretariat, Chennai 600 009.

2.The District Magistrate and
District Collector,
Office of the District Magistrate
and District Collector,
Coimbatore District.

3.The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore District.

...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 Cr.M.P. No.9/G/2015/E1 dated 19.02.2015 on the file of the second respondent herein and to set aside the same and to direct the respondents herein to produce the detenu Selvaraj, son of Perumal, aged about 49 years, who is confined in Central Prison, Coimbatore, before this Court and to set him at liberty.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.M.Maharaja, APP

ORDER

[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.M.P. No.9/G/2015/E1 dated 19.02.2015, whereby the husband of the petitioner, by name, Selvaraj, son of Perumal, aged about 49 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, Mr.R.Alagumani, 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 was remanded in the ground case in Cr.No.229/2014 registered by Kovilpalayam Police Station and he was granted bail in the said case in C.M.P.No.638/2015 by the learned Judicial Magistrate No.II, Coimbatore. But, he is yet to offer sureties as on the date of passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the said case, without relying upon any similar case. He adds that absence of mentioning any similar case would vitiate the order of detention. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind.

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 seen from paragraph 5 of the grounds of detention, detenu was remanded in the ground case in Cr.No.229/2014 registered by Kovilpalayam Police Station and he was granted bail in the said case in C.M.P.No.638/2015 by the learned Judicial Magistrate No.II,

Coimbatore. But, he is yet to offer sureties as on the date of passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the said case, without relying upon any similar case. This would show that the Detaining Authority passed the order of detention mechanically and without application of mind and the facts do not justify the detention. Therefore, the impugned order is passed on mere Ipse-dixit and the order of detention cannot be sustained in the eye of law.

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.In the result, this Habeas Corpus Petition is allowed. 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(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
State of Tamilnadu,
Secretariat, Chennai 600 009.

2.The District Magistrate and
District Collector,
Office of the District Magistrate
and District Collector,
Coimbatore District.

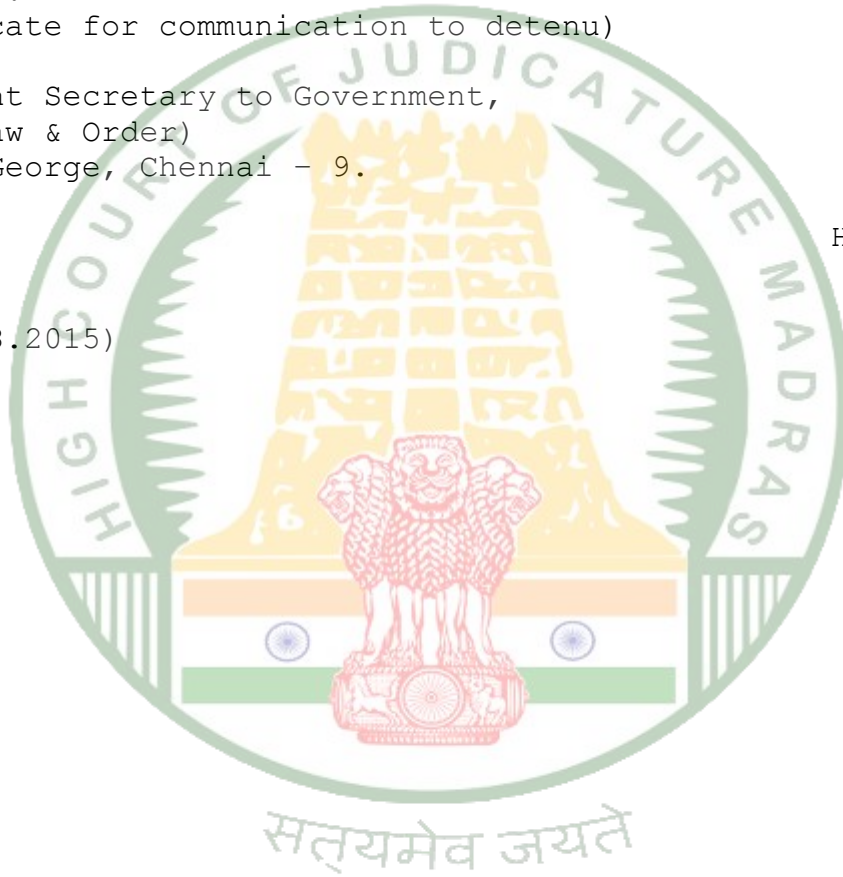
3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent of Central Prison,
Coimbatore.
(In duplicate for communication to detenu)

5.The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

H.C.P.No.740/2015

TS (CO)
PSI (14.08.2015)



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