

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.742 of 2015

Suriya
W/o.Venkatesan

... Petitioner/Mother of
the Detenu

Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner of Police,
Chennai Police,
Chennai.

... 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 in connection with the order of detention passed by the second respondent dated 28.02.2015 in BCDFGISSSV No.203/2015 against the son of the petitioner, detenu Anthony M/A 34, S/o.Venkatesan, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently, direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.K.S.Kaviarasu

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 BCDFGISSSV No.203/2015 dated 28.02.2015, whereby the son of the petitioner, by name, Anthony, S/o.Venkatesan, aged about 34 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, 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 though the detaining authority in paragraph No.4 of the grounds of detention, has stated that the relatives of the detenu are taking steps to file bail application in respect of the ground case, he has failed to state the details as to whether any bail applications have been filed or pending in respect of adverse cases. 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. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

6. A perusal of the grounds of detention in particular para No.4 would show that the detaining authority has stated as follows:

"I am aware that Thiru.Anthony is in remand in H.1 Police Washermenpet Police Station Cr.No.361/2015 and he has not moved a bail application so far. The sponsoring authority has stated that the relatives of Thiru.Anthony are taking

action to file bail application in H1 Washermenpet Police Station Cr.No.361/2015 before the Court. In a similar case registered at H.1 Washermenpet Police Station Cr.No.911/2011 under Sections 341, 336, 384, 427, 307 and 506(ii) IPC bail was granted by the Principal Sessions Court, Chennai, in CrI.M.P.No.9242/2011. Hence, I infer that there is real possibility of his coming out on bail in H.1 Washermenpet Police Station Cr.No.361/2015, by filing bail application before the appropriate court. Since in similar case bails are granted by the Courts after a lapse of time. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order."

From the above, it is clear that details of bail applications filed/pending in respect of adverse cases have not been mentioned. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

7. In the above facts and circumstances, 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 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 IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gm

To

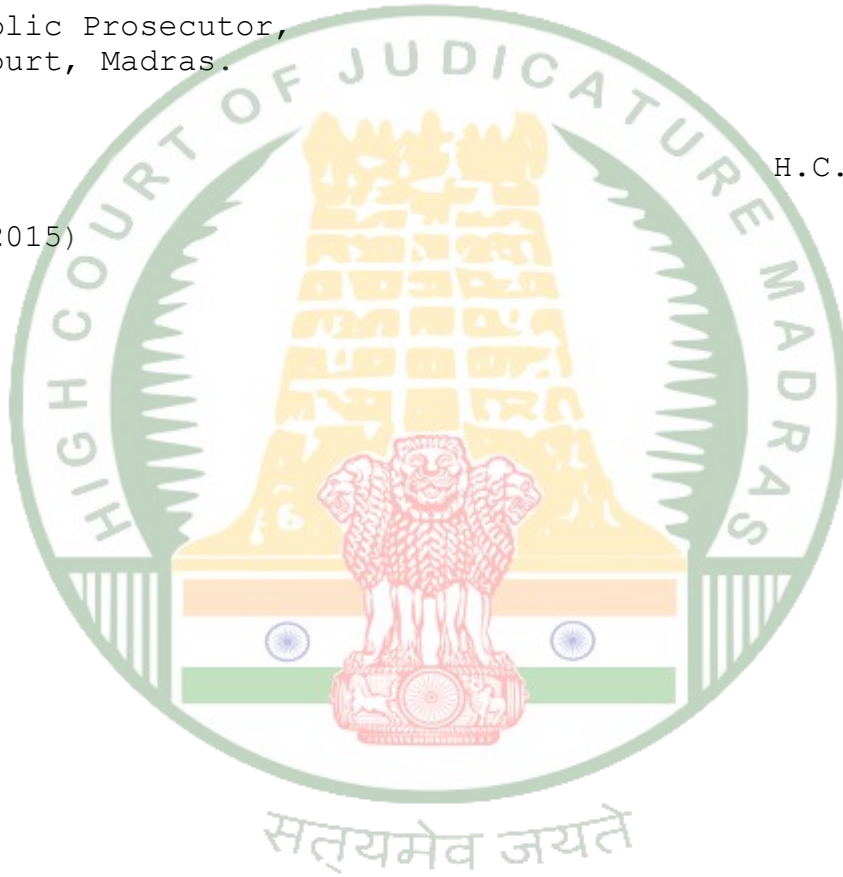
1. The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

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2. The Commissioner of Police,
Chennai Police,
Chennai.
3. The Superintendent of Central Prison
Puzhal, Chennai - 66
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

VGI (CO)
CA(20/08/2015)

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