

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.759 of 2015

Malliga
W/o.Nagamuthu

... Petitioner

Vs

1. The Secretary to Government,
Government of India,
Ministry of Home Affairs,
(Department of Internal Security),
North Block,
New Delhi.
2. The Secretary to Lieutenant Governor,
Rajnivas,
Puducherry.
3. District Magistrate,
Puducherry,
1st Floor, Revenue Complex,
Saram, Puducherry - 605 013.

... Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus calling for the entire records leading to the detention of petitioner's son who has been detained as dangerous person at Central Prison, Kalapet, Puducherry, by the third respondent vide his order No.05/DM/RO/D2/PPASAA/2015 dated 21.02.2015 and quash the same as illegal and consequently direct the respondents to produce the body of the detenu Rajasekar S/o.Nagamuthu, aged about 23 years, from the Central Prison, Kalapet, Puducherry, before this Court and set him at liberty.

For Petitioner : Mr.K.Ananda Kumar

For Respondents : Mr.Ma.P.Thangavel,
Additional Public Prosecutor
[Puducherry] [R2 & R3]

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 third respondent vide Proceedings in No.05/DM/RO/D2/PPASAA/2015, dated 21.02.2015, whereby the detenu, by name, Rajasekar S/o.Nagamuthu, aged about 23 years, was ordered to be detained under subsection (1) of Section of the Puducherry Prevention of Anti-Social Activities Act, 2008 (Act No.10 of 2010), branding him as 'Dangerous Person'.

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. According to the learned counsel for the petitioner no bail application has been filed by the detenu in the ground case so far. Whereas the detaining authority has arrived at the subjective satisfaction that there is possibility of the detenu coming out on bail in the case in Crime No.86 of 2014 on the file of Thavalakuppam Police Station. 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 [Puducherry] 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 the detenu has not filed any bail application in respect of the ground case. 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. When no bail application has been filed either by the detenu or by anyone on his behalf in the ground case, the subjective satisfaction arrived at is mere ruse for issuance of the impugned order of detention. Therefore, the detention order suffers from infirmity and illegality warranting interference by this Court. This order is made only towards setting aside the order of detention passed

against the detenu herein. Any bail applications moved by the detenu in the ground case or in the adverse cases, necessarily would have to be considered by the Court concerned solely on merits uninfluenced by the order of 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(CS III)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary to Government,
Government of India,
Ministry of Home Affairs,
(Department of Internal Security),
North Block,
New Delhi.
2. The Secretary to Lieutenant Governor,
Rajnivas,
Puducherry.
3. District Magistrate,
Puducherry,
1st Floor, Revenue Complex,
Saram, Puducherry - 605 013.

4. The Public Prosecutor,
High Court, Chennai.

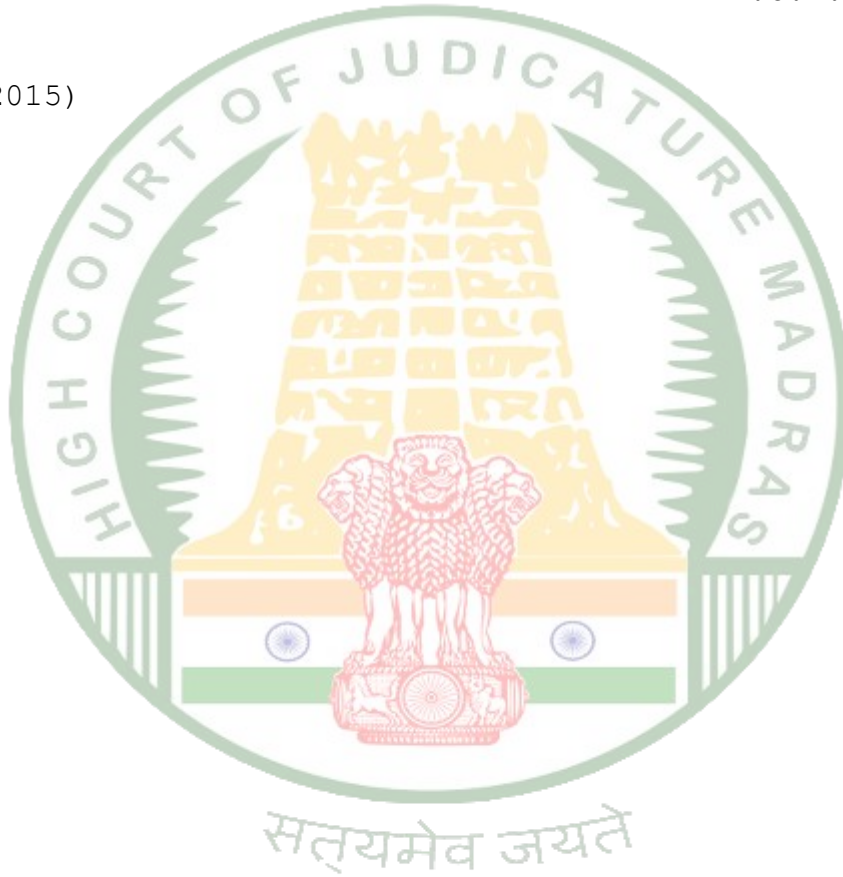
5. The Superintendent of Central Prison,
Kalapet, Puducherry.

+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.38830

+1cc to Special Government Pleader(Pondy), S.R.No.39141

H.C.P.No.759 of 2015

RSI (CO)
CA(18/08/2015)



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