

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.768/2015

Thahira Banu

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary of the Government,
Home, Prohibition & Excise (XVI) Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police,
Detaining Authority,
City Police Office, Huzur Road,
Coimbatore - 641 043 Coimbatore District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records relating to the detention of the petitioner's sister S.Rahamath Chandra, wife of Late Sudhakar, aged about 57 years, presently lodged in Central prison, at Coimbatore has been detained under Act 14/82 as a Drug Offender vide detention order dated 08.03.2015 on the file of the 2nd respondent herein made in C.No.09/G/IS/2015, quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set her at liberty from the Central Prison at Coimbatore.

For Petitioner : Mr.P.Kalimuthu

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

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 C.No.49/G/IS/2014 dated 08.03.2015, whereby the detenu/sister of the petitioner herein, by name S.Rahamath Chandra, wife of Late Sudhakar, aged about 57 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 her as a "DRUG OFFENDER".

2.Though many grounds have been raised in the petition, Mr.P.Kalimuthu, 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 detention order has been passed on total non-application of mind on the part of the Detaining Authority. He would submit that the Detaining Authority, in paragraph 7 of the Grounds of Detention, has stated that he is aware of the provisions under section 37 of the NDPS Act, 1985, which is an unnecessary consideration on the part of the Detaining Authority. This is indicative of total non-application of mind on the part of the Detaining Authority as the provisions of the said section is not applicable to the case of the detenu herein. Therefore, the Detention order is vitiated and is liable to be set aside.

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.

6.A perusal of the Grounds of Detention dated 08.03.2015, in particular, paragraph 7, would show that the Detaining Authority has stated "I am aware of the provision u/s.37 of Narcotic Drugs and Psychotropic Substances Act, 1985...". This statement of the

Detaining Authority shows the non-application of mind on his part, as the quantity involved in the ground case is 1.260 Kgs which is less than the commercial quantity and as such, the provisions of section 37 of the NDPS Act is not applicable. For better appreciation, section 37 of NDPS Act reads thus:-

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27 A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"

Thus, an unnecessary consideration stands entered upon by the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

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 ground.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order is set aside. The detainee is directed to be released forthwith unless her presence is required in connection with any other case.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary of the Government,
State of Tamil Nadu,
Home, Prohibition & Excise (XVI) Department
Fort St George, Chennai 600 009.
2. The Commissioner of Police,
Detaining Authority,
City Police Office, Huzur Road,
Coimbatore - 641 043 Coimbatore District.
3. The Superintendent of Central Prison
Coimbatore.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

MG(CO)
CA(12/08/2015)

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