

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2015

C O R A M

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

H.C.P.No.791 of 2015

K.Rani

... Petitioner

Vs

1. The Commissioner of Police,
Egmore, Chennai-8.
2. The Secretary to the Government
of Tamil Nadu,
Home, Prohibition and Excise
Department, Fort St. George,
Chennai - 9.

... 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 Memorandum No.2162/BCDFGISSSV/2014 passed dated 15.12.2014 of the first respondent and set aside the same and direct the respondent to produce the detenu Siva @ Babu, son of Karavenkaiya, Hindu, aged 34 years, who is now detained at Central Prison, Puzhal, Chennai-66 before this Court and set him at liberty.

For Petitioner : Mr.R.Vijayaraghaven

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 first respondent vide No.2162/2014, dated 15.12.2014, whereby the detenu/son of the petitioner herein, by name, Siva @ Babu, Son of

Karra Venkaiya, male, aged about 34 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual 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.Vijayaraghavan, 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 involved in three adverse cases in Cr.Nos.406/2014 and 540/2014 registered by D-4 Zam Bazaar Police Station and Cr.No.3028/2014 registered by K-3 Aminjikari Police Station respectively and in para 4 of the grounds of detention, the detaining authority has stated that the detenu is in remand in the 3rd adverse case (Cr.No.3028/2014) and ground case (Cr.No.3046/2014) and the bail application moved by him in respect of the ground case was dismissed by the Principal Sessions Judge, Chennai in CrI.M.P.No.19309/2014 and he has not moved any bail application in respect of the 3rd adverse case. The detaining authority has further stated the relatives of the detenu are taking action to take the detenu on bail by filing another bail application in respect of the ground case (Cr.No.3046/2014). However, the detaining authority has not mentioned anything about the remand of the detenu in the first two 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. We have heard the learned counsel for both sides with regard to the facts and citation.

6. A perusal of the grounds of detention, particularly para 4 of the grounds of detention, would show that the detenu is in remand in the 3rd adverse case (Cr.No.3028/2014) and ground case

(Cr.No.3046/2014) and the bail application filed by the detenu in the ground case was dismissed. But the factum of remand of the detenu in the 1st and 2nd adverse cases viz., in Cr.Nos.406/2014 and 540/2014 has not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the 3rd adverse case and ground case. When nothing has been stated about the remand of the detenu in the said two cases, it is not known whether the detenu has filed any bail application in the said adverse cases or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse cases. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

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.Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the first 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

mmi

To

1. The Commissioner of Police,
Egmore, Chennai-8.

WEB COPY

2. The Secretary to the Government
of Tamil Nadu,
Home, Prohibition and Excise
Department, Fort St. George,
Chennai - 9.

3. The Superintendent,
Central Prison, Puzhal,
Chennai. (In duplicate for communication to Dentenue)

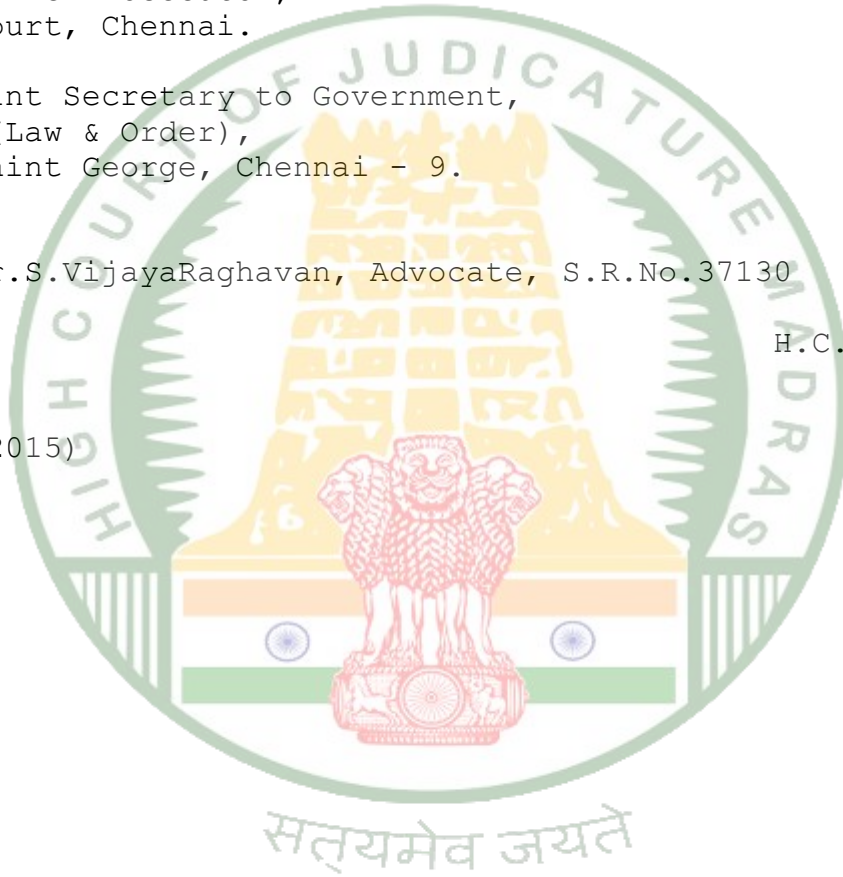
4. The Public Prosecutor,
High Court, Chennai.

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

+1cc to Mr.S.VijayaRaghavan, Advocate, S.R.No.37130

H.C.P.No.791 of 2015

TS (CO)
CA(13/08/2015)



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