

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2015

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THE HONOURABLE MR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.882/2015

Kalpana

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Petitioner

Vs

- 1.The Secretary to the Government
Government of India,
Ministry of Home Affairs,
(Department of Internal Security)
North Block, New Delhi - 110 001.
 - 2.The Secretary to the Lieutenant Governor,
Rajnivas, Puducherry.
 - 3.The District Magistrate cum Authorized Officer,
1st Floor, Revenue Complex,
Saram, Puducherry - 605 013.
- .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in No.07/DM/RO/D2/PPASAA/23015 dated 18.03.2015 on the file of the third respondent herein and quash the same as illegal and consequently direct the respondents to produce the detenu Vijay @ Viji @ Kakkaviji son of Senathipathi, aged about 30 years, who now confined in Central Prison, Kalapet, Puducherry, before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhikumar
For Respondents : Mr.M.Maharaja,APP

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 3rd respondent vide Proceedings in No.07/DM/RO/D2/PPASAA/2015 dated 18.03.2015, whereby the detenu by name Vijay @ Viji @ Kakkaviji, son of Senathipathi, aged about was ordered to be detained under the provisions of sub section (1) of Section 3 of the Puducherry Prevention of Anti Social Activities Act, 2008 (Act No.10 of 2010) branding him as a "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.

3. According to the learned counsel appearing for the petitioner, the Detaining Authority, in paragraph No.4 of the grounds of Detention has stated that the detenu has filed bail application in the ground case [Cr.No.200/2009] and at any moment he would be released on bail. Whereas, the bail application filed by the detenu in the ground case before the learned Principal Sessions Judge, Puducherry in Cr.M.P.No.356 of 2015 was dismissed on 04.03.2015 and he has not filed any further bail application. He has also produced the copy of the said order. This is indicative of total non-application of mind on the part of the Detaining Authority, which vitiates the detention order and the same 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 and citation.

6. It is a case, among other grounds, where the learned counsel for the petitioner would urge that the statement made by the Detaining Authority with regard to the bail application filed by the detenu in the ground case is contrary. As evidenced from the Grounds of Detention, in particular, paragraph No.4, it has been stated by the Detaining Authority as follows:-

"..... However he has applied for bail and he may be released on bail at any moment and he may continue his unlawful activities."

However, as evidenced from the copy of the bail order produced by the learned counsel appearing for the petitioner, the bail application filed by the detenu in the ground case [Cr.No.200/2009] before the learned Principal Sessions Judge, Puducherry in Cr.M.P.No.356 of 2015 was dismissed on 04.03.2015 and he has not filed any further bail application. This is indicative of non-application of mind on the part of the Detaining Authority and the same would vitiate the order of detention and the same 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 sole ground.

9. 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

True Copy

Sub Assistant Registrar

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To

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(Department of Internal Security)
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 3. The District Magistrate cum Authorized Officer,
1st Floor, Revenue Complex,
Saram, Puducherry - 605 013.
 4. The Superintendent of Central Prison
Kalapet, Puducherry.
 5. The Joint Secretary to Government
Public (Law & Order)
Fort St. George, Chennai-9
 6. The Public Prosecutor, High Court, Madras.
- 1 cc to Government Pleader-cum- Senior Public Prosecutor. Sr.No.41556

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pmk.26.8.2015