

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2015

CORAM

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

H.C.P.No.890/2015

Rajamani

..Petitioner

Vs

- 1.The Principal Secretary to Government
Home, Prohibition & Excise [XVI] Department
Secretariat, Chennai 600 009.
- 2.The District Magistrate & District Collector
O/o.The District Magistrate & District Collector
Dharmapuri District.
- 3.The Inspector of Police
Indoor Police Station, Dharmapuri District.

..Respondents

This Habeas corpus petition filed under Article 226 of the Constitution of India praying for issuance of a WRIT OF HABEAS CORPUS calling for the entire records connected with the detention order in SC.No.09/2015 dated 23.02.2015 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of the petitioner's son Sudhakar, son of Nataraj, aged about 28 years, now confined at Central Prison, Salem before this Court and set him at liberty forthwith.

For petitioner : Mr.S.M.A.Jinnah

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 SC.No.09/2015 dated 23.02.2015, whereby the deten/the son of the petitioner by name Sudhakar, son of Nataraj, aged about 28 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, Mr.S.M.A.Jinnah, 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 has been formally arrested and remanded to judicial custody in the adverse cases in Cr.Nos.795/2014 ; 489/2014 ; 537/2014 and 961/2014 registered by the Dharmapuri Police Station, Pochampalli Police Station and Adhiyamankottai Police Station respectively and though the said factum of the remand of the detenu in the adverse cases in Cr.Nos.795/2014 ; 489/2014 ; 537/2014 and 961/2014 has been reflected in the grounds of detention, more particularly in paragraph 4 of the Detention order, it is not stated by the Detaining Authority as to whether the detenu has filed any bail applications in the said cases or not or whether the relatives of the detenu are taking steps to file any bail applications and no material is furnished by the Detaining Authority to that effect and only a mention about the pendency of the bail application filed in the ground case before the court concerned has been made by the Detaining Authority. 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.

6.As could be evidenced from the Grounds of Detention furnished before us, the detenu was arrested by way of P.T.Warrant in the adverse cases in Cr.Nos.795/2014 ; 489/2014 ; 537/2014 and 961/2014 registered by Dharmapuri Police Station ; Krishnagiri Police Station and Adhiyamankottai Police Station respectively and the Arrest Intimation in the said cases is also furnished in the Booklet. Though the factum of remand of the detenu in the adverse cases in Cr.Nos.795/2014 ; 489/2014 ; 537/2014 and 961/2014, has been reflected in paragraph 4 of the Grounds of Detention, only a reference has been made in respect of the ground case [Cr.No.273/2014] where the bail application filed by the detenu was pending before the learned Judicial Magistrate-II, Dharmapuri in CrI.MP.No.737/2015 as on the date of the passing of the detention

order before the court concerned. When nothing has been stated about filing of any bail applications by the detenu or by his relatives in the said adverse case Nos.2 to 4 and when no material is furnished in the Booklet, it is not known whether the detenu has been released on bail in those 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 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

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Principal Secretary to Government
Home, Prohibition & Excise [XVI] Department
Secretariat, Chennai 600 009.
- 2.The District Magistrate & District Collector
O/o.The District Magistrate & District Collector
Dharmapuri District.
- 3.The Inspector of Police
Indoor Police Station, Dharmapuri District.
- 4.The Public Prosecutor, High Court, Madras.
- 5.The Superintendent of Central Prison, Salem.
6. The Joint Secretary to Government Public (Law & order)
Fort St. George, Chennai-9.

+ 1 cc to Mr. S.M.A Jinnah, Advocate Sr.38805

H.C.P.No.890/2015

VSN(CO)

Eu 13.08.15