

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2015

C O R A M

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

H.C.P.No.952 of 2015

S.Shabana ... Petitioner
Vs

1. The State of Tamil Nadu rep. By its
Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai - 9.

2.The District Magistrate and District
Collector, Krishnagiri District.

3.The Superintendent,
Central Prison, Salem - 7. ... 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 entire records leading to the detention of petitioner's husband Syed Roshan, age 25, son of Adham, presently detained in Central Prison, Salem, under Act 14/1982, as a GOONDA vide the detention order dated 03.11.2014 in S.C.No.46/2014 on the file of the second respondent herein, directing to produce the body or the person of the detenu before this Court and thereafter set him at liberty from the Central Prison, Salem.

For Petitioner : Mr.B.Vasudevan

For Respondents : Mr.M.Maharaja
Addl. 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 S.C.No.46/2014, dated 03.11.2014, whereby the

detenu/husband of the petitioner herein, by name, Syed Roshan, Son of Adham, male, aged about 25 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 him as a "GOONDA".

2. Though many grounds have been raised in the petition, Mr. B. Vasudevan, learned counsel for the petitioner has assailed the impugned detention order on the ground that the detaining authority, while considering the real possibility of the detenu coming out on bail in the case in which he was on remand, has observed in para 4 of the grounds of detention that the detenu has not filed bail petition in the ground case but his relatives are taking action to file bail application in the said case and hence there is a possibility of the detenu coming out on bail; whereas there is no material to show that the relatives of the detenu are taking action to file bail application in the ground case and hence the subjective satisfaction expressed itself is vitiated.

3. Per contra, Mr. M. Maharaja, the learned Additional Public Prosecutor 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. He would further submit that the detenu and other accused are from different States and there is possibility of the detenu absconding from the territorial jurisdiction of the Court.

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. In para 4 of the grounds of detention, the detaining authority has observed that the relatives of the detenu are taking action to file bail application for him in the ground case and based on other materials, arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the ground case. There is no material found in the booklet to show that the relatives are taking action to file bail application for him in the ground case in Crime No. 341/2014. In such circumstances, the contention of the learned counsel for the petitioner that the subjective satisfaction expressed itself is vitiated is to be countenanced. On this ground alone, the order of detention is vitiated and liable to be set aside. Any bail applications moved by the detenu in the ground case or in the adverse case, necessarily would have to be considered by the Court concerned solely on merits.

6. In the result, this Habeas Corpus Petition is allowed. 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

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai - 9.
 2. The District Magistrate and District
Collector, Krishnagiri District.
 3. The Superintendent,
Central Prison, Salem - 7.
 4. The Joint Secretary to Government
Public (Law & Order)
Fort St. George, Chennai - 9
 5. The Public Prosecutor,
High Court, Chennai.
- 2 cc to Mr. B. Vasudevan, Advocate Sr. No. 30673 & 31267

H.C.P.No.952 of 2015

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