

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2015

CORAM

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

H.C.P.No.2771/2014

Selvi .. Petitioner/Mother of the detenue

Vs.

1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Chennai Police, Vepery, Chennai. ..

Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 19.09.2014 in Memo No.1319/2014 against the son of the petitioner, the detenu Murugan, M/A 31, son of Moorthy, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.K.S.Kaviarasu

For Respondents : Mr.M.Maharaja,APP

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 Memo No.1319/2014 dated 19.09.2014, whereby the detenu/son of the petitioner, by name, Murugan, son of Moorthy, aged 31 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.K.S.Kaviarasu, 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 Detaining Authority has stated in paragraph 4 of the Grounds of detention that the detenu is in remand in the adverse cases in Cr.Nos.1122/2014, 1137/2014 and 1128/2014 and in the ground case in Cr.No.1138/2014 registered by the G5 Secretariat Colony Police Station and the bail applications moved by the detenu in the said cases before the learned Principal Sessions Judge, Chennai in CrI.MP.Nos.14295/2014, 14296/2014, 13921/2014 and 14299/2014 were pending as on the date of passing of the detention order. But, the said bail applications were dismissed by the learned Judge concerned even prior to and on the date of passing of the detention order. This is indicative of total non-application of mind on the part of the Detaining Authority. Hence, it is submitted that the detention order is vitiated on these grounds 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 evidenced from the Grounds of Detention, in particular, paragraph No.4, the detenu is said to be in remand in the ground case [Cr.No.1138/2014] and in the adverse cases [Cr.Nos.1122/2014, 1137/2014 and 1128/2014] and the bail applications moved in the said cases before the Court concerned were pending as on the date of passing of the detention order. But, a perusal of the Additional typed set of papers annexed to the affidavit filed in support of this petition, would show that the bail applications filed by the detenu in the ground case and in the adverse cases were dismissed, i.e., even prior to the passing of the detention order on 11.09.2014 and on the date of passing of the detention order, i.e., on 19.09.2014. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone. Further, this order is passed only to set aside the detention order passed as against the detenu and any bail application filed by the detenu should have to be decided by the Court concerned independently and on merits, uninfluenced by the order of this Court.

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 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

To

- 1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police
Chennai Police, Vepery, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Central Prison
Puzhal, Chennai.
- 5.The Joint Secretary to Government
Public (L&O) fort St.George, Chennai.

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