

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2015

CORAM

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

H.C.P.No.2883 of 2014

Anbarasi

... Petitioner

Vs.

1. State of Tamil Nadu,
rep. by its Secretary,
Prohibition and Excise Department
Fort St. George, Chennai-9.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records relating to the detention order in BDFGSSIV No.1424/2014 dated 04.10.2014 passed by the second respondent under the Tamil Nadu Act 14/1982 and to quash the same and to produce Velladurai, S/o.Irulappan, aged about 53 years, before this Court and to set him at liberty.

For petitioner : Mr.B.Nambiselvan

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

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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 BDFGSSIV No.1424/2014 dated 04.10.2014, whereby the husband of the petitioner by name Velladurai, S/o.Irulappan, aged about 53 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.B.Nambiselvan, 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 is in remand in the 1st and 2nd adverse cases [Cr.Nos.302/2014 and 433/2014] and in the ground case [Cr.No.1568/2014] and the bail application filed by the detenu in the 1st adverse case before the learned Principal District and Sessions Judge, Villupuram in Crl.M.P. No.6477/2014 was dismissed and the 2nd bail application filed before this Court in Crl.O.P. No.26205/2014 was pending as on the date of passing of detention order. Though a reference was made by the detaining authority about the remand of the detenu in 1st and 2nd Adverse cases and in ground case, he has not stated whether the detenu has filed any bail application in the said cases or whether he has been granted bail in those 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.As could be evidenced from paragraph 4 of the Grounds of Detention placed before us, the detenu was arrested in the 1st and 2nd adverse cases and in the ground case in Cr.Nos.302, 433 and 1568/2014 registered by Gingee, G-4 Uthiramerur and M-1 Madhavaram Police Stations respectively. Subsequent bail application filed by the detenu in the 1st Adverse case in Cr.No.302/2014 was pending before this Court in Crl.OP. No.26205/2014 pursuant to the dismissal of the bail application filed by the detenu. Though the factum of arrest and remand of the detenu in the 2nd Adverse case and ground case are mentioned by the detaining authority in paragraph 4, it has not been stated by him as to whether the detenu has filed any bail application in the said cases or whether the detenu has been granted bail. 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 in No. BDFGSSIV No.1424/2014 dated 04.10.2014 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(CO)

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Sub Assistant Registrar

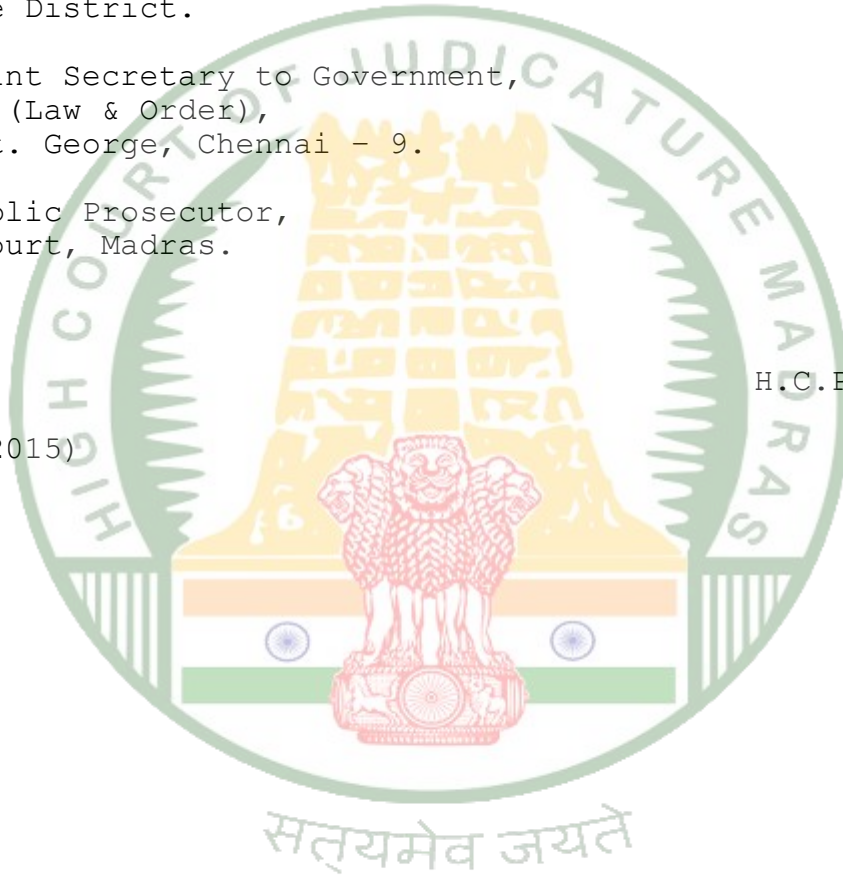
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To

1. The Secretary,
State of Tamil Nadu,
Prohibition and Excise Department
Fort St. George, Chennai-9.
2. The Commissioner of Police,
Chennai Police, Egmore, Chennai-8
3. The Superintendent of Central Prison,
Vellore District.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

KK(CO)
CA(12/06/2015)

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