IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2015

CORAM

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

H.C.P.No.2936/2014

Esayammal .. Petitioner

Vs

1.The Secretary
State of Tamil Nadu
Home, Prohibition & Excise
Department, Fort St George,
Chennai 600 009.

2.The Commissioner of Police
The Commissioner Office
Vepery, Chennai 600 007. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records relating to the detention order in Memo No.1468/BDFGISSV/2014 dated 10.10.2014 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Stephen @ Stephenraj son of George, aged about 32 years the detenu now confined in the Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Stephen @ Stephenraj, son of George, aged about 32 years the detenu herein at liberty.

For Petitioner : Mr.Ilayaraja Krishnan
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 2nd respondent vide Proceedings in Memo No.1468/BDFGISSV/2014 dated 10.10.2014, whereby the petitioner's son by name Stephen @ Stephenraj, Son of George, aged about 32 years, was ordered to be detained under the provisions of 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] as a "GOONDA".

2.As per the grounds of detention dated 10.10.2014, passed by the 2nd respondent, the detenu came to adverse notice in the following cases:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

i)Adverse Cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	F5 Choolaimedu Police Station Cr.No.180/2012	379 IPC
2	F5 choolaimedu PS Cr.No.764/2012	392 IPC
3	F5 Choolaimedu PS Cr.No.923/2012	379 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	M8 Sathangadu PS Cr.No.1706/2014	341, 294[b], 336, 427, 392 r/w 397 & 506[ii] IPC

3. Though many grounds have been raised in the petition, Mr.Ilayaraja Krishnan, 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.

4. According to the learned counsel appearing for the petitioner, the Detaining Authority has stated that the detenu is involved in three adverse cases [Cr.No.180/2012, 764/2012 and 923/2014] and in the ground case [Cr.No.1706/2014] and the bail application filed by him in the ground case before the learned Principal Sessions Judge, Thiruvallur, in Crl.MP.No.3599/2014 was dismissed and the second bail application filed before this Court in Crl.OP.No.27614/2014 was pending as on the date of passing of the detention order. It is submitted that the occurrences in the adverse cases took place in the year 2012 and the occurrence in the ground case took place in the year 2014 and there is no proximity and live link between the detention of the detenu and the alleged prejudicial activities, necessitating the Detaining Authority to arrive at the subjective satisfaction that there is likelihood of the detenu coming out on bail in the ground case. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind. In support of his contention, the learned counsel for the petitioner relied on the judgment of a Division Bench of this Court dated 12.10.2012 made in Habeas Corpus Petition.Nos.380, 617 and 1406 of 2012 [PARAPPATY SURESH @ SURESHKUMAR, AMUTHA GOWSIGA BOOPATHY AND LEELA Vs. THE COMMISSIONER OF POLCIE, SALEM CITY POLICE, SALEM AND 2 OTHERS].

5.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

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6.We have heard the learned counsel for both sides with regard to the facts and citation.

7.As evidenced from the Grounds of Detention, in particular, the adverse cases, the occurrences are said to have taken place in the year 2012 whereas the occurrence in the ground case is said to have taken place in the year 2014 and there is absolutely no "proximity" and "live link" between passing of the detention order and the offences alleged against the detenu herein which necessitated the Detaining Authority to pass the order of detention as against the detenu. Therefore, the said fact would vitiate the order of detention and the same cannot be sustained in the eye of law and hence, it is liable to be dismissed.

8. At this juncture, it is relevant to refer the judgment of this Court dated 12.10.2012 made in HCP.Nos.380, 617 and 1406/2012 [cited supra], wherein the Division Bench has held as follows:-

> "....
>
> 37.A Full Bench of this Court in the decision reported in 2005[2] LW [Crl.] 946 [FB] [K.THIRUPATHI V. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, TIRUCHIRAPPALLI DISTRICT AND ANOTHER] referring the decisions of the Hon'ble Apex Court, held as follows:-
>
> > "25.It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with Article 22 of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty".
> >
> > [Emphasis Supplied]
>
> The principles laid down by the Hon'ble Apex Court in the decisions cited supra make it clear that non-furnishing of material and vital documents also vitiates the detention orders
>
> [IV]Whether there is proximity between the offences referred in the detention orders passed against the detenus and whether there is compelling necessity for the Detaining Authority to pass the detention orders?
>
> 38.Mr.N.Natarajan, learned Senior counsel appearing for the detenus strenuously contended that the offences said to have been committed by the detenus in respect of the adverse cases related to the years 2007, 2008, 2009 and 2011 and there is no proximity and live link between the detention of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

detenus and the alleged prejudicial activities, necessitating the Detaining Authority to arrive at the subjective satisfaction that there is imminent possibility or compelling necessity to pass the detention orders.

[Emphasis Supplied]

39.It is pointed out by the learned Senior Counsel that in respect of Habeas Corpus Petition.No.380/2012, the occurrence in the first adverse case took place on 13.08.2010 which relates to offence of murder ; the occurrence in the 2nd adverse case was on 20.01.2008 ; the occurrence took place in the 3rd adverse case on 28.03.2007 ; the occurrence in the 4th adverse case was between August 2007 and 12.01.2009 and the occurrence in the ground case was said to have taken place on 14.09.2009.

.....

45.In view of the aforesaid factors, we have no hesitation to hold that there is absolutely no 'proximity' and 'live link' between passing of detention order and the offences alleged against the detenus herein."

9.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.

9.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above sole ground.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in Memo No.1468/BDFGISSV/2014 dated 10.10.2014 passed by the 2nd respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

WEB COPY

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

https://hcservices.ecourts.gov.in/hcservices/

To

1.The Secretary
State of Tamil Nadu
Home, Prohibition & Excise
Department, Fort St George,
Chennai 600 009.

2.The Commissioner of Police
The Commissioner Office
Vepery, Chennai 600 007.

3.The Superintendent, Central Prison,Puzhal, Chennai.

4.The JOint Secretary to Government
Public (L&O) Fort St.George, Chennai.

5.The Public Prosecutor, Madras High Court, Madras

ry(co)
krd 21/4

H.C.P.No.2936/2014

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/