IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

CORAM

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

H.C.P.No.2971/2014

Alamelu .. Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition & Excise Department
Secretariat, Fort St George, Chennai-9.

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

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 04.10.2014 in BDFGISSV No.1426/BDFGISSV/2014 against the son of the petitioner Chandru @ Chandrakumar, M/A 24, son of Kuppan, who is confined at Central Prison, Vellore and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at his liberty.

For petitioner : Mr.K.Kaviarasu
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 BDFGISSV No.1428/BDFGISSV/2014 dated 04.10.2014, whereby the son of the petitioner by name Chandru @ Chandrakumar, son of Kuppan, aged 24 years, was ordered to be detained under the provisions of Tamil Nadu Prevention of Dangerous

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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.As per the grounds of detention dated 04.10.2014, passed by the second respondent, the detenu came to adverse notice in the following cases:

i)Adverse Cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Gingee PS Cr.No.302/2014	302 IPC @ 120[b], 302, 201 IPC
2	G4 Uthiramerur PS Cr.No.433/2014	302 IPC @ !20[b], 302, 201 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	M1 Madhavaram PS Cr.No.1568/2014	341, 294[b], 336, 427, 392 r/w 397 & 506[ii] IPC

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

4.Learned counsel appearing for the petitioner submitted that the detenu has been formally arrested and remanded to judicial custody in the 1st adverse case in Cr.No.302/2014 registered by Gingee Police Station and was arrested and remanded to judicial custody in the 2nd adverse case in Cr.No.433/2014 by G4 Uthiramerur Police Station; but the said factum of the remand of the detenu in the adverse cases in Cr.Nos.302/2014 and 433/2014 has not been reflected in the grounds of detention, more particularly in paragraph 4 of the Detention order. 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.

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

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

7.As could be evidenced from the Booklet furnished before us, the detenu was arrested by way of P.T.Warrant in the 1st adverse case in Cr.No.302/2014 registered by Gingee Police Station and was arrested and remanded to judicial custody in the 2nd adverse case in Cr.No.433/2014 registered by G4 Uthiramerur Police Station. But the factum of remand of the detenu in the adverse cases has not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the ground case. When nothing has been stated about the remand of the detenu in the said adverse cases, it is not known whether the detenu has filed any bail applications in the said adverse cases or not. If that be so, there is no imminent possibility of the detenue 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.

8.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 mentioned grounds.

10.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 Secretary to the Government,
Home, Prohibition & Excise Department
Secretariat, Fort St George, Chennai-9.

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

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3.The Superintendent of Central Prison
Vellore.

4.The Joint Secretary to Government
Public (Law & Order)
Fort St.George,Chennai-9

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2971/2014

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