

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2015

CORAM

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

H.C.P.No.3007 of 2014

Chellammal

...Petitioner/
Mother of the detenu

Vs.

1. The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
2. The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records in connection with the order of detention passed by the 2nd respondent dated 10.10.2014 in BDFGISSV No.83/2014 against the petitioner son Kudimi Vinoth @ Vinoth Kumar, male, aged 29 years, son of Anbalagan, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

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 BDFGISSV No.83/2014 dated 10.10.2014, whereby the detenu/son of the petitioner, by name, Kudimi Vinoth @

Vinoth Kumar,, son of Anbalagan, aged 29 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.C.V.Kumar, 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 remand in the ground case in Cr.No.830/2014 on the file of the Chengalpattu Town Police Station for the alleged offences u/s.294 [b], 307 IPC r/w 3 of TNPPDL Act and the bail petition filed by him before the learned Principal District Sessions Judge, Chengalpattu in CrI.MP.No.2716/2014 was pending. But, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case based on his release on bail in the adverse cases No.1 to 3, viz., in Cr.Nos.19/2012, 345/2014 and 355/2014 by the learned Magistrate concerned. But, the Detaining Authority has not taken effective steps to find out whether the detenu is in custody in the 4th adverse case or not. This is indicative of non-application of mind on the part of the Detaining Authority. Thus, 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.A perusal of the Grounds of Detention, in particular, para 5, would show that the Detaining Authority has made a mention about the pendency of the bail petition in the ground case before the learned Principal District and Sessions Judge, Chengalpattu in CrI.MP.No.2716/2014 and about the granting of bail to the detenu in the adverse cases No.1 to 3, viz., by the learned Principal Sessions Judge and by the learned Judicial Magistrate No.1, Chengalpattu, in CrI.MP.Nos.1431/2012, 1444/2014 and 1449/2014. But, the fact that

whether the detenu is in custody/remand in respect of the 4th adverse case, has not received any consideration of the Detaining Authority. This is indicative of 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.

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 (CS-II)

//True Copy//

Sub Assistant Registrar

AP

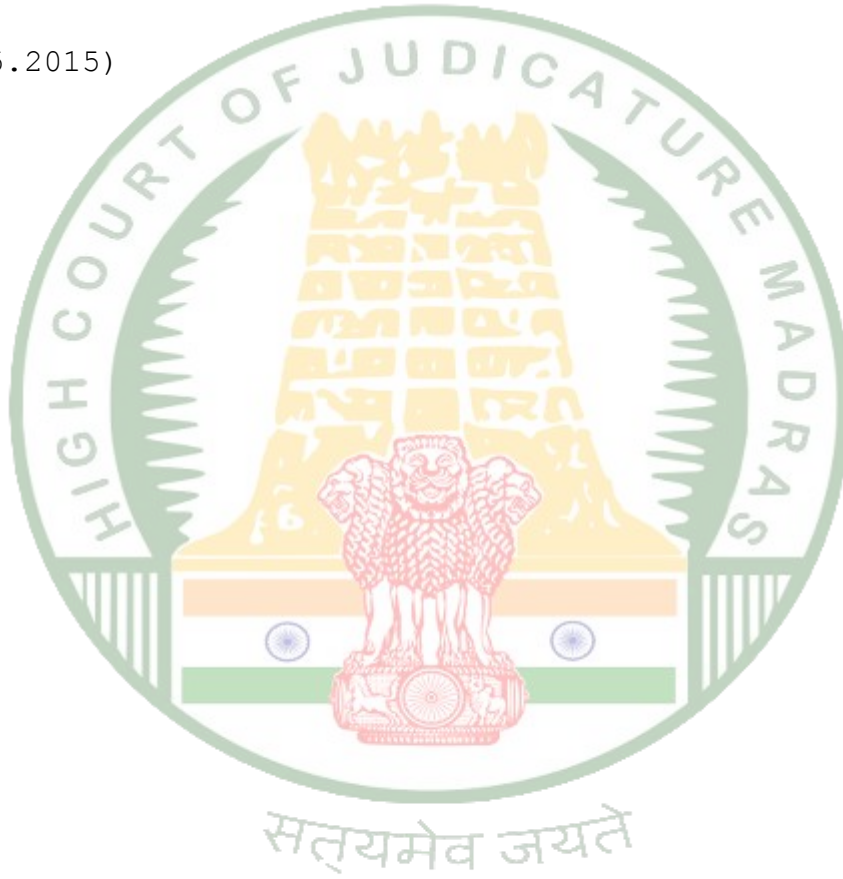
To

1. The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
2. The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.
3. The Public Prosecutor,
High Court, Madras.

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

H.C.P.No.3007/2014

GR (CO)
PSI (05.05.2015)



WEB COPY