

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2015

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THE HONOURABLE DR.JUSTICE S.TAMILVANAN

and

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.3071/2014

Rajesh @ Selvakumar

.. Petitioner

Vs.

1.Commissioner of Chennai,
Chennai Police, Egmore,
Chennai-600 008.

2.Secretary to Government,
Government of Tamil Nadu,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George, Chennai-600 009.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records maintained in Memo No.1393/BDFGISSV/2014 dated 29.09.2014 on the file of the first respondent viz. Commissioner of Chennai, Egmore, Chennai-600 008 and to set aside the order passed by the abovesaid first respondent and to set the petitioner Rajesh @ Selvakumar, son of Subramani, No.18, Alamathi, Vanichatram, Redhills, Chennai-600 052 now detained in Central Prison-II, Puzhal, Chennai-600 062 at liberty.

For petitioner : Mr.S.Rajeswaran

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 first respondent vide Proceedings in Memo No.1393/BDFGISSV/2014 dated 29.09.2014, whereby the petitioner/detenu by name, Rajesh @ Selvakumar, son of Subramani, 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.As per the grounds of detention dated 29.09.2014, passed by the second respondent, the detenu came to adverse notice in the following cases:

i)Adverse Cases:

<i>Sl Nos.</i>	<i>Name of the Police station and Crime No.</i>	<i>Section of law</i>
1	V-4 Rajamangalam PS Cr.No.365/2014	454 and 380 IPC
2	V-4 Rajamangalam PS Cr.No.860/2014	457 and 380 IPC
3	V-6 Kolathur PS Cr.No.941/2014	341, 294(b), 384 and 506(ii) IPC
4	V-1 Villivakkam PS Cr.No.1352/2014	392 IPC

(ii) Ground Case:

<i>Sl No.</i>	<i>Name of the Police station and Crime No.</i>	<i>Section of law</i>
1	V-4 Rajamangalam PS Cr.No.1135/2014	341, 294(b), 336, 397 & 506[ii] IPC

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

Mr.S.Rajeswaran, 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 all the adverse cases in Cr.Nos.365/2014, 860/2014, 941/2014 and 1352/2014 registered by the V-4 Rajamangalam Police Station, V-6 Kolathur Police Station and V-1 Villivakkam Police Station respectively, but the said factum of the remand of the detenu in the adverse cases in Cr.Nos.365/2014, 860/2014, 941/2014 and 1352/2014 have 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.

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 adverse cases in Cr.Nos.365/2014, 860/2014, 941/2014 and 1352/2014 registered by the V-4 Rajamangalam Police Station, V-6 Kolathur Police Station and V-1 Villivakkam Police Station respectively. But the factum of remand of the detenu in the adverse cases in Crime Nos.365/2014, 860/2014, 941/2014 and 1352/2014, have 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 application in the said adverse cases or not. If that be so, there is no imminent possibility of the detenu 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 first respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

[S.T.,J.] [C.T.S.,J.]
21.04.2015

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To

1.Commissioner of Chennai,
Chennai Police, Egmore,
Chennai-600 008.

2.Secretary to Government,
Government of Tamil Nadu,
Department of Home, Prohibition and Excise,
Secretariat, Fort St. George, Chennai-600 009.

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent of Central Prison
Puzhal, Chennai.

S.TAMILVANAN,J.

AND
C.T.SELVAM, J.
vga

H.C.P.No.3071/2014

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