

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM

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

H.C.P.No.3080/2014

P.M.Mathi

..

Petitioner

Vs.

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2. The Commissioner of Police/Detaining Authority
Coimbatore City.

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records of the detention made in C.No.38/G/IS/2014 dated 14.10.2014 passed by the Commissioner of Police/Detaining Authority, Coimbatore City, the 2nd respondent herein, and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu Thiru Arun Hassan @ Arun, son of Manohar @ Punniamoorthy, aged 29 years, now confined in Central Prison, Coimbatore, at liberty.

For Petitioner : Mr.R.Balakrishnan
For Respondents : Mr.M.Maharaja,APP

सत्यमेव जयते
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.93/2014 dated 14.11.2014, whereby the detenu/the husband of the petitioner herein, viz., Thiru Arun Hassan @ Arun, son of Manohar @ Punniamoorthy, aged 29 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.R.Balakrishnan, 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 ground case in Cr.No.812/2014 on the file of the Singanallur Police Station for the alleged offence u/s.392 r/w 397 IPC and the bail application moved by him in the said case was dismissed by the learned Principal District and Sessions Judge, Coimbatore in CMP No.29741/2014 on 25.09.2014 and the second bail application filed by him before this Court in Crl.OP.No.27730/2014 was pending as on the date of passing of the detention order. But the detaining authority, has arrived at subjective satisfaction that the detenu would be granted bail in the ground case, by relying upon a similar case, wherein, bail was granted to the accused A.Ganesan by the learned Principal District and Sessions Judge, Coimbatore in CMP.No.1866/2013 on 14.08.2013. It is further contended that when a bail application is pending before a higher court, only the bail granted by the said higher court in such similar case, has to be relied on by the Detaining Authority and not by relying upon the bail granted by a lower court. This is indicative of total non-application of mind on the part of the detaining authority and the detention order is vitiated and is unsustainable in law.

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 evidenced from the Grounds of Detention, the detenu is in remand in the ground case [Cr.No.812/2014] and the further bail application filed by him in the said case, before this Court in Crl.OP.No.27730/2014, pursuant to the dismissal of the earlier application by the learned Principal District and Sessions Judge, Coimbatore in CMP No.29741/2014 on 25.09.2014, was pending as on the date of passing of the detention order. But, in paragraph 9, the Detaining Authority has referred to a similar case wherein, the accused Ganesan was granted bail by the Sessions Judge, Coimbatore. Whenever a bail application is pending on the file of a higher court, a similar case wherein bail granted by the said higher court has to be relied upon and not the bail granted by the court below. 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 passed by the second respondent is set aside. The detainee is directed to be released forthwith unless his presence is required in connection with any other case.

AP

s/d-
Assistant Registrar(R)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police/Detaining Authority
Coimbatore City.
3. The Superintendent of Central Prison
Coimbatore.
4. The Joint Secretary to Govt.
Public (Law & Order)Dept.
Fort StGeorge, Chennai 9.
5. The Public Prosecutor,
High Court, Madras.

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