

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.3089 of 2014

Muniyamal

..

Petitioner

Vs.

1.The Secretary, Government of Tamil Nadu
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 records relating to the proceedings of the 2nd respondent in BDFGISSV No.88/2014 dated 26.10.2014 against the detenu Rasukutti @ Govindaraj, son of Padikadu @ Marimuthu, aged about 24 years and quash the same and consequently direct the respondents herein to produce the detenu who is detained under the Tamil Nadu Act 14 of 1982, currently confined in the prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.P.Anbazhagan

For Respondents : Mr.M.Maharaja,APP

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.88/2014 dated 26.10.2014, whereby the detenu/son of the petitioner, by name, Rasukutti @ Govindaraj,, son of Padikadu @ Marimuthu, aged 24 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 "BOOTLEGGER".

2.Though many grounds have been raised in the petition, Mr.P.Anbazhagan, 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.644/2014 on the file of the Prohibition Enforcement Wing, Madurantakam and the bail petition filed by him before the learned Principal District and Sessions Judge, Chengalpattu in CrI.MP.No.3045/2014 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 1st adverse case in Cr.No.422/2012 by the learned Magistrate concerned. Further, the detenu has been arrested in the 3rd adverse case and he is in remand ; but the same has not been considered by the Detaining Authority and he has not mentioned about the same in the Grounds of Detention. 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.3045/2014 and about the granting of bail to the detenu in the 1st adverse case, viz., by the learned Principal District and Sessions Judge, Chengalpattu, in CrI.MP.No2415/2012. But, the fact that whether the detenu has moved any bail application in the 4th adverse case wherein the detenu is said to be arrested and is in remand, has not received any consideration of the Detaining Authority. This is indicative of non-application of mind on the part of the Detaining Authority. It is also evident from the tabular column furnished by the Detaining Authority showing the details of the adverse cases, that the arrest of the detenu in the 3rd adverse case and filing of charge sheet, has wrongly been mentioned in the 4th column of the 1st adverse case. This is also indicative of the 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

True Copy

Sub Assistant Registrar

To

- 1.The Secretary, Government of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.
- 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

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