

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2015

CORAM

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

H.C.P.No.3186/2014

Bhuvaneswari

..

Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St George, Chennai..

2.The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records relating to the detention order passed by the 2nd respondent pertaining to the order made in BDFGISSV No.91/2014 dated 05.11.2014 in detaining the detenu under section 2[b] of the Tamil Nadu Act 14 of 1982 as a Bootlegger and quash the same and direct the respondents to produce the detenu Senthil, son of Perumal, male aged 24 years who is detained at Central Prison, Vellore, before this Court and set him at liberty.

For petitioner : Mr.O.S.Thilak Pasumbadiyar
For respondents : Mr.M.Maharaja
Additional Public Prosecutor

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.91/2014 dated 05.11.2014, whereby the son of the petitioner by name Senthil, son of Perumal, aged 24 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 "Bootlegger".

2.As per the grounds of detention dated 05.11.2014, 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	Dusi PS Cr.No.344/2014	4[1][k] TNP Act
2	PEW, Kancheepuram Cr.No.427/2014	4[1][a] TNP Act r/w 6 & 11 RS Rules, 2000

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	PEW Kancheepuram Cr.No.428/2014	4[1][aaa], 4[1-A] TNP Act, r/w 6 & 11 RS Rules, 2000

3. Though many grounds have been raised in the petition, Mr.O.S.Thilak Pasumbadiyar, 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 arrested and remanded to judicial custody in the 2nd adverse case in Cr.No427/2014 registered by the Prohibition Enforcement Wing, Kancheepuram, but the said factum of the remand of the detenu in the said adverse case has not been reflected in the grounds of detention, more particularly in paragraph 5 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 Tabular Column given in the Grounds of Detention, the detenu was arrested in the 2nd adverse case in Cr.No.427/2014 registered by the PEW, Kancheepuram. But the said factum of remand of the detenu in the adverse cases has not been reflected in paragraph 5 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 case, it is not known whether the detenu has filed any bail application in the said adverse case or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse case. 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//
सत्यमेव जयते

Sub Assistant Registrar

AP

To

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St George, Chennai.

2.The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.

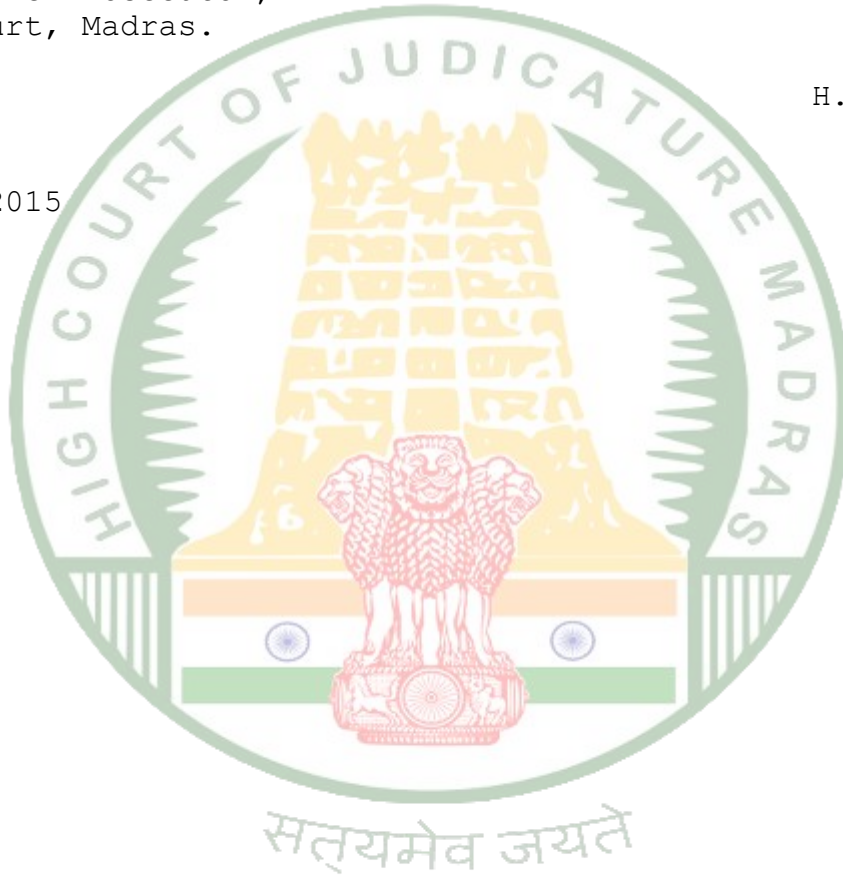
3.The Superintendent of Central Prison
Vellore.

4.The Joint Secretary to Government,
Public(Law & Order)
Fort St.George, Chennai - 600 009.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.3186/2014

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