

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2015

CORAM

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

H.C.P.No.3253 of 2014

Sasikala

.. Petitioner/Wife of
the Detenu

Vs.

1. The Secretary to the Government,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police
Chennai Police,
Egmore, Chennai-8.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 30.10.2014 in BDFGISSV No.1642/2014 against the petitioner's husband, Arul Murugan, son of Chidambaram, aged about 29 years, who is confined at Central Prison, Puzhal, 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.V.Ganesh
For respondents : Mr.M.Maharaja
Additional Public Prosecutor

ORDER

(The 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.1642/2014 dated 30.10.2014, whereby the petitioner's husband/detenu herein, viz., Arulmurugan, son of Chidambaram, 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. As per the grounds of detention dated 30.10.2014, 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	K-11, C.M.B.T. PS Cr.No.992/2014	457, 380 and 511 IPC
2	K-11, C.M.B.T. PS Cr.No.1012/2014	380 IPC
3	K-10, Koyambedu PS Cr.No.1549/2014	341, 294(b), 323 & 392 IPC
4	K-10, Koyambedu PS Cr.No.1555/2014	341, 294(b), 323 & 392 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	K-10, Koyambedu PS Cr.No.1570/2014	341, 294(b), 323, 427, 397 & 506(ii) IPC

3. Though many grounds have been raised in the petition, Mr.V.Ganesh, 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 the 1st and 2nd adverse cases in Cr.Nos.992/2014 and 1012/2014 registered by K-11 C.M.B.T. Police Station, but the said factum of the remand of the detenu in the said adverse cases has 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 given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

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. 992/2014 and 1012/2014 registered by K-11 C.M.B.T. Police Station. But the said factum of remand of the detenu in the said adverse cases has not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the remand in the ground case and the 3rd and 4th adverse cases. When nothing has been stated about the remand of the detenu in the 1st and 2nd 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 second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

vsi

s/d-

Assistant Registrar (V)

True Copy

Sub-Assistant Registrar

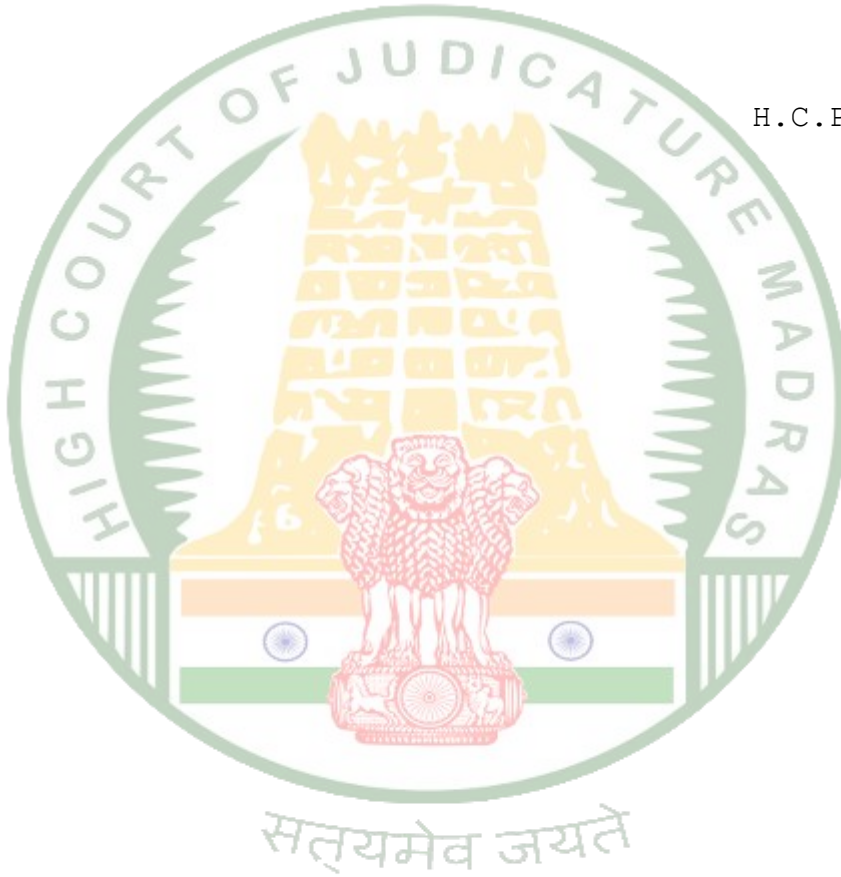
To

1. The Secretary to the Government,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2. The Commissioner of Police
Chennai Police, Egmore, Chennai-8.
3. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (L&O) Department,
Fort St.George, Chennai.9.
5. The Public Prosecutor, High Court, Madras.

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