

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2015

CORAM

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

H.C.P.No.3273/2014

E.Valli

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Petitioner

Vs.

1.The Secretary to the Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St. George, Chennai 600 009.

2.The Commissioner of Police
O/o.The Commissioner of Police
Goondas Section, Egmore,
Chennai 600 008.

3.The Superintendent of Central Prison
Central Prison, Vellore.

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Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records relating to the detention order in No.1425/BDFGISSV/2014 dated 04.10.2014 passed by the 2nd respondent and Confirmation Order No.5143/2014 dated 15.10.2014 passed by the 1st respondent herein and quash the same and direct the respondents to produce the detenu namely Rajesh, son of V.Elangovan, aged 26 years, before this Court now detained under section 2[f] of the TPDA Act 14 of 1982 in the Central Prison, Vellore and set him at liberty.

For Petitioner : M./s.Lakshmipriya Associates

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 No.1425/BDFGISSV/2014 dated 04.10.2014, whereby the detenu/son of the petitioner, by name, Rajesh, son of Elangovan, aged 26 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 "GOONDA".

2.Though many grounds have been raised in the petition, the learned counsel appearing on behalf M./s.Lakshmipriya Associates 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 Detaining Authority has stated in paragraph 4 of the Grounds of detention that the detenu is in remand in the ground case in Cr.No.1568/2014 registered by M1 Madhavaram Police Station. Further, the detenu is also arrested and remanded to judicial custody in respect of the adverse cases in Cr.Nos.302/2014 and 433/2014 registered by Gingee Police Station and Uthiramerur Police Station respectively. But, the Detaining Authority has not arrived at any subjective satisfaction before passing the detention order. This is indicative of total non-application of mind on the part of the Detaining Authority. Hence, it is submitted that 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.As evidenced from the Grounds of Detention, in particular, paragraph No.4, the detenu is said to be in remand in the ground case [Cr.No.1568/2014] and in the adverse cases [Cr.Nos.302/2014

and 433/2014] as evidenced from the Tabular Column furnished by the Detaining Authority. But, the basis on which the Detaining Authority has arrived at the subjective satisfaction, has not all been dealt with by the Detaining Authority. But, the Detaining Authority has stated that there is a likelihood of the detenu coming out on bail in the ground case by relying upon the similar cases. This is indicative of total non-application of mind on the part of the Detaining Authority as the inference has to be drawn that the detenu has not moved any bail application in the ground case as well as in the adverse cases as on the date of passing of the detention order. Therefore, the detention order is vitiated and liable to be quashed on this ground alone. Further, this order is passed only to set aside the detention order passed as against the detenu and any bail application filed by the detenu should have to be decided by the Court concerned independently and on merits, uninfluenced by the order of this Court.

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/-
Asst. Registrar (CS III)

/true copy/

Sub Asst. Registrar

AP

To

1.The Secretary to the Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St. George, Chennai 600 009.

2.The Commissioner of Police
O/o.The Commissioner of Police
Goondas Section, Egmore,
Chennai 600 008.

3.The Superintendent of Central Prison
Central Prison, Vellore.

4.The Public Prosecutor,
High Court, Madras.

5. The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9

1 cc to M/s.Lakshmipriya Associates, Sr. 22438

H.C.P.No.3273/2014

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