

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.3275/2014

Karthika

...Petitioner/
Wife of the detenu

Vs.

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police
O/o.The Commissioner of Police
Vepery, Chennai.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14/1982 vide detention order dated 30.10.2014 on the file of the 2nd respondent herein made in proceedings Memo No.1648/BDFGISSV/2014, quash the same, as illegal and consequently direct the respondents herein to produce the petitioner's husband namely Rajesh, S/o.Veerakumar, aged 29 years before this Court and set the petitioner's husband at liberty from detention now the petitioner's husband detained at Central Prison, Puzhal, Chennai.

For Petitioner : Mr.W.Camyles Gandhi
For Respondents : Mr.M.Maharaja,APP

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 Memo No.1648/BDFGISSV/2014 dated 30.10.2014, whereby the detenu/the husband of the petitioner herein, viz., Rajesh, S/o.Veerakumar, 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.W.Camyles Gandhi, 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.1832/2014 on the file of the M3 Puzhal Police Station for the alleged offence u/s.341, 294[b], 336, 427, 392 r/w 397, 506[iii] PC and the bail application moved by him in the said case was pending as on the date of passing of the detention order. Further, the detenu is in remand in the 2nd adverse case; but the Detaining Authority has not taken into consideration the said aspect and has not stated as to whether the detenu has moved any bail application in the said 2nd adverse case. This is indicative of 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.1832/2014] and the bail application filed by him in the said case was pending before the Court concerned

as on the date of passing of the detention order. Further, as evidenced from the Tabular column furnished by the Detaining Authority, the detenu's 2nd adverse case has not received consideration of the Detaining Authority, as to whether the detenu has moved any bail application in the said adverse case or he has been granted bail. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail application moved by the detenu in the ground case or in the adverse cases, necessarily would have to be considered by the Court concerned solely on merits. 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 detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

AP

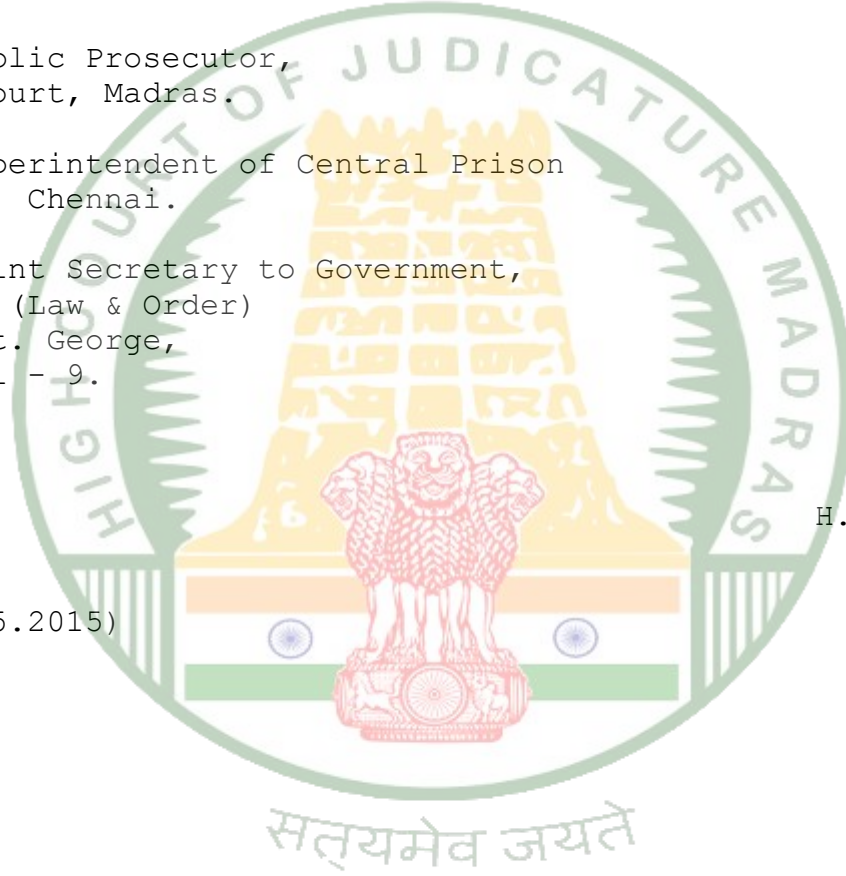
WEB COPY

To

1. The Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police
O/o.The Commissioner of Police
Vepery, Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison
Puzhal, Chennai.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George,
Chennai - 9.

GR (CO)
PSI (05.05.2015)

H.C.P.No.3275/2014



WEB COPY