

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.3323/2014

V.Madhammal

... Petitioner

Vs.

1. The Secretary to the Government
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
2. The District Magistrate & District Collector
Dharmapuri District.
3. The Superintendent, Central Prison
Salem-7.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the entire records leading to the detention of the petitioner's husband Velu aged 48 years, son of Appu Goundar, Vanniyar Street, Karagur village, Seeriyampatti post, Palacode Taluk, Dharmapuri District, presently detained in Central Prison, Salem under Act 14/1982 as a "Drug Offender" vide the detention order dated 26.10.2014 in SC.No.24/2014 on the file of the 2nd respondent herein, directing to produce body or the person of the detenu before this Court and thereafter set him at liberty from the Central Prison, Salem by setting aside the above order.

For Petitioner : Mr.B.Vasudevan

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

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 SC.No.24/2014 dated 26.10.2014, whereby the detenu/husband of the petitioner, by name, Velu, son of Appu Goundar, aged 58 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 "Drug Offender".

2.Though many grounds have been raised in the petition, Mr.B.Vasudevan, 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 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.259/2014 registered by Marandahalli Police Station and the bail application moved by the detenu in the said case before the learned Special Judge, Essential Commodities Act Court, Salem in Crl.MP.No.225/2014 was pending as on the date of passing of the detention order. The said bail application was dismissed by the learned Judge concerned only on 27.10.2014. But, a copy of which is furnished in the Booklet supplied to the detenu. 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.259/2014] and the bail application moved in the said case before the Court concerned was pending as on the date of passing of the detention order. But, a perusal of the Booklet, in particular, page 82, would show that the bail application filed by the detenu in the ground case was dismissed on 27.10.2014, i.e, the next day of the passing of the detention order. When a bail application is dismissed on the subsequent day of passing of the detention order, it is not known as to how the Detaining Authority has got a copy of the same, even prior to passing of the order of detention. This is indicative of total 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(CS IV)

//True Copy//

Sub Assistant 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 District Magistrate & District Collector
Dharmapuri District.
3. The Superintendent, Central Prison
Salem-7.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.22464

H.C.P.No.3323/2014

SSI (CO)
CA(22/05/2015)



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