

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2015

CORAM

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

H.C.P.No.3409 of 2014

Sivagami

.. Petitioner

Vs.

- 1.The State rep. by the Secretary to the Government,
Home, Prohibition & Excise Department
Government of Tamilnadu, Fort St.George, Chennai-600,009.
 2. The Commissioner of Police,
Chennai Police, Goondas Section,
Vepery, Chennai-600 007.
- .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the petitioner's son, Viji @ Vijayaraghavan, male, S/o Jayaraman, aged 29 years, and now confined at Central Prison, Puzhal, Chennai before this Court and to set him at liberty forthwith by calling for the records vide order in BCDFGISSSV No.1660/2014 dated 31.10.2014 and to set aside the same.

For petitioner : Mr.K.Elangovan

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

सत्यमेव जयते
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 in BCDFGISSSV No.1660/2014 dated 31.10.2014, whereby the petitioner's son by name Viji @ Vijayaraghavan, male, S/o Jayaraman, 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.K.Elangovan, 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 has been arrested and remanded to judicial custody in the 2nd adverse case in Cr.No.1879/2014 registered by M-8, Sathangadu Police Station, but, the said factum of the remand of the detenu in the 2nd adverse case in Cr.Nos.1879/2014 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.

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. It is seen from paragraph No.1 of the detention order that the detenu was arrested in the 2nd adverse case in Cr.Nos.1879/2014 registered by M-8, Sathangadu Police Station. But the factum of remand of the detenu in the 2nd adverse case in Cr.Nos.1879/2014 has not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the 1st adverse case and ground case. When nothing has been stated about the remand of the detenu in the 2nd 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.

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

True Copy

Sub Assistant Registrar

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To

1. The Secretary to the Government,
Home, Prohibition & Excise Department
Government of Tamilnadu, Fort St. George,
Chennai-600,009.
2. The Commissioner of Police,
Chennai Police, Goondas Section,
Vepery, Chennai-600 007.
3. The Superintendent of Central Prison
Puzhal, Chennai.
4. The Joint Secretary to Government
Public (Law & Order)
Fort St. George, Chennai-9
5. The Public Prosecutor,
High Court, Madras.

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pmk.23.6.2015

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