

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN  
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.3459 of 2014

J.Thangam

..

Petitioner

Vs

1. The Government of Tamil Nadu,  
rep. By its Secretary,  
Prohibition and Excise Department,  
Fort St.George, Chennai.

2. The Commissioner of Police,  
Salem City, Salem

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

.. Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the records in C.M.P.No.57/Goonda/Salem City/2014 dated 07.11.2014 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu viz., Prem @ Premraj, aged 24 years, S/o Raja, now confined in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.M.Maharaja,

Additional Public Prosecutor

ORDER

(Order of the Court is made by S.TAMILVANAN,J)

Challenge is made to the order of detention passed by the second respondent vide C.M.P.No.57/Goonda/Salem City/2014 dated 07.11.2014, whereby the detenu/the nephew of the petitioner herein, by name, Prem @ Premraj, aged 24 years, S/o Raja, 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, Mr.P.Vijendran, 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 No.5 of the detention order that in similar cases, the accused were granted bail viz., (a) by the learned Principal Sessions Judge, Salem in C.M.P.No.3749/2011 dated 22.12.2011 in respect of Cr.No.1792/2011 on the file of Salem Town Police Station for the offence under Section 302 IPC registered against one Thiru. Vetrivelan @ Sathya, who was remanded on 9.10.2011 and (b) by the learned Principal Sessions Judge, Salem in C.M.P.No.1463/2014, dated 28.04.2014 in respect of Cr.No.197/2014 on the file of Ammapet Police Station for the offence under sections 147, 148, 341, 324 IPC r/w 3(1) of TNPPDL Act 1992 registered against Socho @ Absar, who was remanded on 9.4.2014. In the said two similar cases referred to by the detaining authority, the accused were involved in communal clash and have committed the above said offences but in the ground case, the accused had committed murder due to previous enmity and therefore, the similar cases referred to by the detaining authority are not the same as that of the ground case. The subjective satisfaction arrived at by the Detaining Authority that bail would be granted to the detenu in the above said cases, on the basis of the bail granted in the similar cases, referred to by the Detaining Authority is baseless. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is a real possibility of the detenu coming out on bail in the ground case and in the adverse case is a mere ipse dixit without any cogent materials.

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. It is seen from paragraph No.5 of the grounds of detention that the detenu is in remand in the ground case [Cr.No.299/2014] and in the adverse case [Cr.No. 162/2014] and the bail application filed by him in the ground case was dismissed and that the relative of the detenu is taking steps to move bail application in the ground case as well as in the adverse case. The detaining authority has further stated that in similar cases, the accused were granted bail, viz., (a) by the learned Principal Sessions Judge, Salem in

C.M.P.No.3749/2011 dated 22.12.2011 in respect of Cr.No.1792/2011 on the file of Salem Town Police Station for the offence under Section 302 IPC registered against one Thiru. Vetrivelan @ Sathya, who was remanded on 9.10.2011 and (b) by the learned Principal Sessions Judge, Salem in C.M.P.No.1463/2014, dated 28.04.2014 in respect of Cr.No.197/2014 on the file of Ammapet Police Station for the offence under sections 147, 148, 341, 324 IPC r/w 3(1) of TNPPDL Act 1992 registered against Socho @ Absar who was remanded on 9.4.2014. From the booklet it is seen that the materials produced in the said two similar cases referred to by the detaining authority, would show that the accused were involved in communal clash and have committed the above said offences but in the ground case, the accused had committed murder due to previous enmity and therefore, the similar cases referred to by the detaining authority are not the same as the ground case. Further, the Detaining Authority has arrived at the subjective satisfaction by placing reliance on the similar cases. Therefore, the Detaining Authority, in total non-application of mind, has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the ground case and in the adverse case by referring to and relying upon the bail granted in the similar cases. This non-application of mind on the part of the Detaining Authority vitiates the Detention Order and the said Detention Order cannot be sustained in the eye of law and the same is liable to be set aside. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail applications moved by the detenu in the ground case or in the adverse case, necessarily would have to be considered by the Court concerned solely on merits.

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. In the result, this Habeas Corpus Petition is allowed. The impugned detention order 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(CS-III)

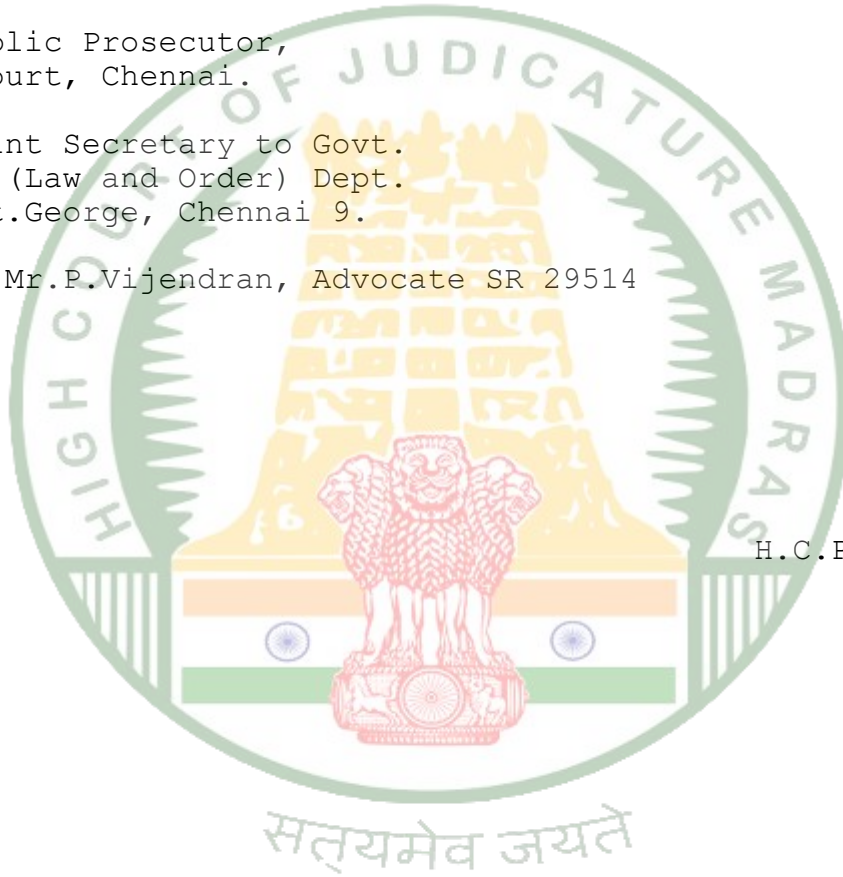
True Copy

Sub-Assistant Registrar

To

1. The Secretary,  
Prohibition and Excise Department,  
Fort St.George, Chennai.
  2. The Commissioner of Police,  
Salem City, Salem
  3. The Superintendent of Prison,  
Central Prison, Salem.
  4. The Public Prosecutor,  
High Court, Chennai.
  5. The Joint Secretary to Govt.  
Public (Law and Order) Dept.  
Fort St.George, Chennai 9.
- + 1 cc to Mr.P.Vijendran, Advocate SR 29514

ad(co)  
prk25/6



H.C.P.No.3459 of 2014

WEB COPY