

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.3634/2014

Muniyappan

.. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Fort St George,
Chennai-600 009.

2.The Commissioner of Police/Detaining Authority,
O/o.Commissioner office,
Coimbatore, Coimbatore District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records relating to the petitioner's son detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 02.12.2014 on the file of the second respondent herein made in proceedings Memo C.No.43/G/IS/2014 and to quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son namely Vadivel, aged about 33 years, before this Court and to set the petitioner's son at liberty from detention, now the petitioner's son detained at Central Prison, Coimbatore.

For petitioner : Mr.W.Camyles Gandhi

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

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O R D E R

[Order of the Court was made by C.T.Selvam, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo C.No.43/G/IS/2014 dated 02.12.2014, whereby the son of the petitioner, by name, Vadivel, aged about 33 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 Detaining Authority has placed reliance on a case wherein the accused M. Raja @ Kattai Raja was released on statutory bail by the learned District and Sessions Judge, Coimbatore in CMP No. 5189/2011 on 10.11.2011 for the offence u/s. 302 IPC in the case in Cr. No. 866/2011 on the file of B-5 Singanallur Police Station, to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case, wherein bail application filed was pending. The said case is not similar as consideration of statutory bail does not arise in the ground case of the detenu. This is indicative of the non-application of mind on the part of the Detaining Authority.

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 could be evidenced from paragraph No. 8 of the Grounds of Detention, the detenu's bail application filed in the ground case before the learned District Judge, Coimbatore in CMP No. 3452/2014 was pending as on the date of passing of the detention order. It is also further evidenced from the said paragraph that a reference was made to a similar case registered by the B-5 Singanallur Police Station in Cr. No. 866/2011, wherein statutory bail was granted to the accused M. Raja @ Kattai Raja by the Court concerned. But a perusal of the Booklet/Paper Book placed before this Court, in particular, page No. 282, the statutory bail was granted under Section 167 of Cr.P.C. to the said accused. Such is not the position in the case of the detenu. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

7. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

8. 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 (J)

/true copy/

Sub Asst. Registrar

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To,

1.The Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Fort St George,
Chennai-600 009.

2.The Commissioner of Police/Detaining Authority,
O/o.Commissioner office,
Coimbatore, Coimbatore District.

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent of Central Prison
Coimbatore.

5.The Joint Secretary to Government
Public Law & order Fort St.George
Chennai-9

H.C.P.No.3634/2014

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