

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2015

CORAM

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

H.C.P.No.3726 of 2014

Balaraman ... 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.The Commissioner of Police
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 16.12.2014 on the file of the second respondent herein made in proceedings Memo C.No.45/G/IS/2014 passed by the 2nd respondent herein and quash the same and direct the respondents to produce the petitioner's son namely Kannan, S/o Balaraman, aged 27 years before this Court and set the petitioner's son at liberty from detention, who is now detained at Central Prison, Coimbatore.

For petitioner : Mr.K.R.Ramesh

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

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 C.No.45/G/IS/2014 dated 16.12.2014, whereby the son of the petitioner, by name, Kannan, son of Balaraman, aged 27 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, Sexual 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.R.Ramesh, 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 similar case wherein the accused Raja @ Kattai Raja was released on statutory bail by the learned District and Sessions Judge, Coimbatore, in CrI.M.P No.5189/2011 on 10.11.2011 for the offences under section 302 IPC in the case in Cr.No.866/2011 on the file of B5, 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 by filing bail application. But, the said similar case is not at all a similar case to the ground case of the detenu. 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. As could be evidenced from paragraph No.8 of the Grounds of Detention, the detenu's bail applications filed in the ground case [Cr.No.882/2014] were dismissed. It is also further evidenced from the said paragraph that a reference was made to a similar case registered by the B5, Singanallur Police Station in Cr.No.866/2011, wherein bail was granted to the accused M.Raja @ Kattai Raja by the learned District and Sessions Judge, Coimbatore on 10.11.2011. But a perusal of the Booklet/Paper Book placed before this Court, in particular, page No.282 & 283, it is seen that the said accused was granted statutory bail under Section 167[ii] of Cr.P.C. Such is not the position in the case of the detenu as in the ground 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 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.

vsi

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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.The Commissioner of Police
Coimbatore,
Coimbatore District.
3. The Superintendent of Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai 9.

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