

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.3798/2014

Vatchala

.. Petitioner

Vs.

1.The State rep.
by the Secretary to Government,
Home, Prohibition & Excise Department
Fort St. George, Chennai-600 009.

2.The Commissioner of Chennai Police,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records culminating the detention of the petitioner's husband Mohan Raj, S/o.Dhanan Sezhian, aged about 47 years, under Act 14 of 1982 vide detention order dated 18.12.2014 on the file of the second respondent herein, made in proceedings in No.BCDFGISSSV No.2227/2014 and to quash the same as illegal and consequently direct the respondents to produce the body and person of the said detenu before this Court and thereafter to set him at liberty from Central Prison, Puzhal, Chennai.

For petitioner : Mr.V.Murugesan

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 No.BCDFGISSSV No.2227/2014 dated 18.12.2014, whereby the husband of the petitioner, by name, Mohan Raj, S/o.Dhanan Sezhian, aged about 47 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.V.Murugesan, 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 though the detenu has been formally arrested and remanded to judicial custody in the 2nd adverse case in Cr.No.2261/2014 registered by M-3 Puzhal Police Station, the said factum of the remand of the detenu in the 2nd adverse case in Cr.No.2261/2014 has not been reflected in the grounds of detention, more particularly in paragraph 4 of the Detention order and only a reference has been made in respect of the ground case. 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 the grounds of detention, though the detenu was formally arrested in the 2nd adverse case in Cr.No.2261/2014 registered by M-3 Puzhal Police Station, the factum of remand of the detenu in the 2nd adverse case viz., in Cr.No.2261/2014 has not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the ground case. When nothing has been stated about the remand of the detenu in the said 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. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail application moved by the detenu in the ground case or in the adverse cases, 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 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/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vga

To

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

2.The Commissioner of Chennai Police,
Chennai.

3.The Superintendent of Central Prison
Puzhal, Chennai.

4. The Joint Secretary to Government
Public (law and order)
Fort Saint George, Chennai-9

5.The Public Prosecutor,
High Court, Madras.

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KJI (CO)
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