

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.3805/2014

Shaila Banu

... Petitioner

Vs.

1.State rep. by Secretary to Government,
Home, Prohibition & Excise Department,
Government of Tamil Nadu,
Fort St George, Chennai.

2.The Commissioner of Police,
Chennai Police, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records relating to the order dated 15.12.2014 made in order No.2157 of 2014 issued by the second respondent and to quash the same and to produce the detenu viz. Nazar, son of Shahul Hameed, aged about 37 years, now detained at Central Prison, Puzhal, Chennai before this Court and to set him at liberty.

For petitioner : Mr.R.Thiagarajan

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

ORDER

[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.2157 of 2014 dated 15.12.2014, whereby the husband of the petitioner, by name, Nazar, son of Shahul Hameed, aged about 37 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. R. Thiagarajan, 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 Suresh was released on statutory bail by the learned Judicial Magistrate, Alandur in CrI.M.P. No.8311/2013 on 29.08.2013 for the offence u/s.341, 294(b), 392, 397 and 506(ii) IPC in the case in Cr.No.162/2013 on the file of S-3 Meenambakkam 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 in Cr.No.887/2014 and in the 1st adverse case in Cr.No.862/2014 wherein the bail applications filed by the detenu in CrI.M.P. Nos.3550 and 3688/2014 before the learned Principal Sessions Judge, Kancheepuram District at Chengalpattu are pending. But, the said similar case is not at all a similar case to the ground case or the 1st adverse 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.4 of the Grounds of Detention, the detenu's bail application filed in the ground case as well as in the 1st adverse case in Crime Nos.887 and 862/2014 respectively before the learned Principal Sessions Judge, Kancheepuram District at Chengalpattu in CrI.M.P. Nos.3550 and 3688/2014 were 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 S-3 Meenambakkam Police Station in Cr.No.162/2013, wherein statutory bail was granted to the accused Suresh by the Court concerned. But a

perusal of the Booklet/Paper Book placed before this Court, in particular, page No.281, the statutory bail was granted under Section 167(ii) 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.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(CS II)

//True Copy//

Sub Assistant Registrar

vga

To

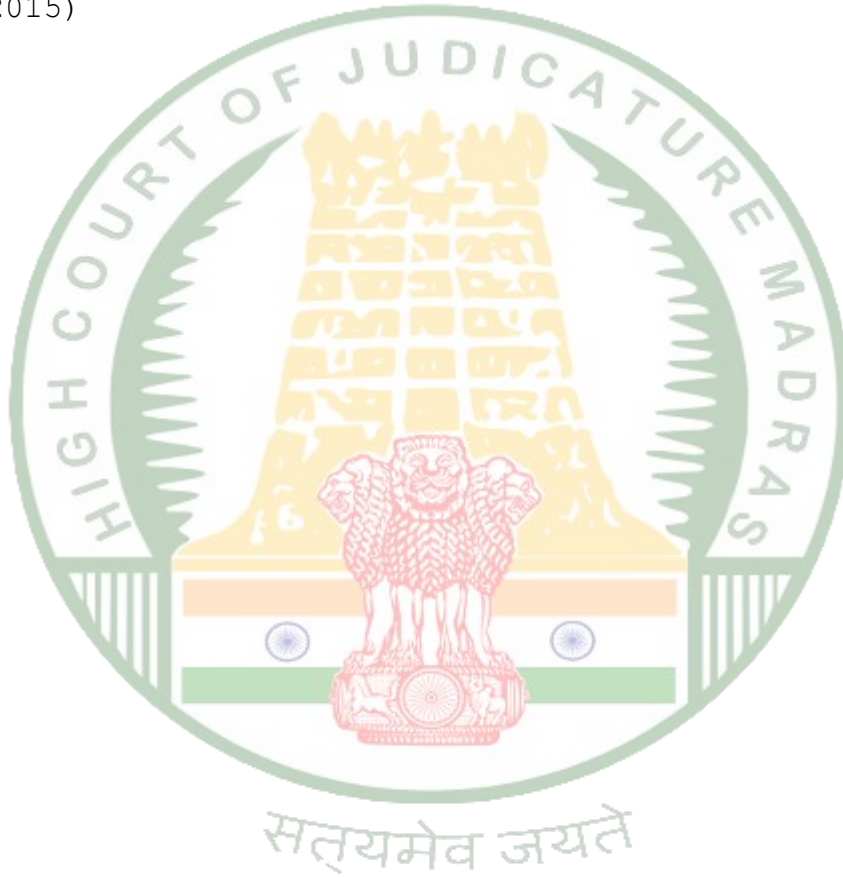
- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Government of Tamil Nadu,
Fort St George, Chennai.
- 2.The Commissioner of Police,
Chennai Police, Chennai.
- 3.The Superintendent of Central Prison
Puzhal, Chennai.

4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.3805/2014

KM(CO)
CA(13/07/2015)



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