

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1615/2015

Dawood

.. Petitioner

Vs.

1.The Secretary to the Government,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

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 to call for the records in connection with the order of detention passed by the 2nd respondent dated 20.06.2015 in BCDFGISSSV No.470/2015 against the brother of the petitioner, detenu Rafiq @ Mohammad Rafiq, M/A 26, S/o.Abdul Jaffer, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For petitioner : Mr.K.S.Kaviarasu

For respondents : Mr.M.Maharaja, APP

सत्यमेव जयते
O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in BCDFGISSSV No.470/2015 dated 20.06.2015, whereby the detenu/the brother of the petitioner herein, by name Rafiq @ Mohammad Rafiq, M/A 26, S/o.Abdul Jaffer, 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. As per the grounds of detention dated 20.06.2015, passed by the second respondent, the detenu came to adverse notice in the following cases:

i) 5th adverse case:

S1 No.	Name of the Police station and Crime No.	Section of law
1	S13 Chrompet PS Cr.No.267/2014	379 IPC
2	S13 Chrompet PS Cr.No.544/2014	379 IPC
3	S13 Chrompet PS Cr.No.565/2014	379 IPC
4	S6 Sankar Nagar PS Cr.No.943/2015	379 IPC
5	S5 Pallavaram PS Cr.No.989/2015	379 IPC

(ii) Ground Case:

S1 No.	Name of the Police station and Crime No.	Section of law
1	S5 Pallavaram PS Cr.No.996/2015	341, 294[b], 392, 336, 427, 506[ii] IPC

3. Though many grounds have been raised in the petition, Mr.K.S.Kaviarasu, 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.

4. Learned counsel appearing for the petitioner submitted that the detenu has been remanded to judicial custody in the 5th adverse case in Cr.No.989/2015 and in the ground case in Cr.No.996/2015 registered by the S5 Pallavaram Police Station as well as in the 4th adverse case in Cr.No.943/2015 registered by S6 Sankar Nagar Police Station by way of PT Warrant and though a mention has been made by the Detaining Authority in respect of 5th adverse case and the ground case in paragraph 4 of the Grounds of Detention, the factum of the remand of the detenu in the 5th adverse case in Cr.No.943/2015 has not been reflected. 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.

5. 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.

6.We have heard the learned counsel for both sides with regard to the facts and citation.

7.As could be evidenced from the Grounds of Detention, in particular, paragraph 1, the detenu was arrested by way of P.T.Warrant in the 4th and 5th adverse cases in Cr.Nos.943/2015 and 989/2015 registered by S6 Sankar Nagar Police Station and S5 Pallavaram Police Station respectively. But the factum of remand of the detenu in the 4th adverse case has not been reflected in paragraph 4 of the Grounds of Detention and only a reference with regard to the pendency of the bail petitions has been made in respect of the ground case and the 5th adverse case before the Court concerned. When nothing has been stated about the remand of the detenu in the said 4th 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.

8.It is 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.

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

10.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.

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Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

AP

To

1.The Secretary to the Government,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Chennai Police, Chennai.

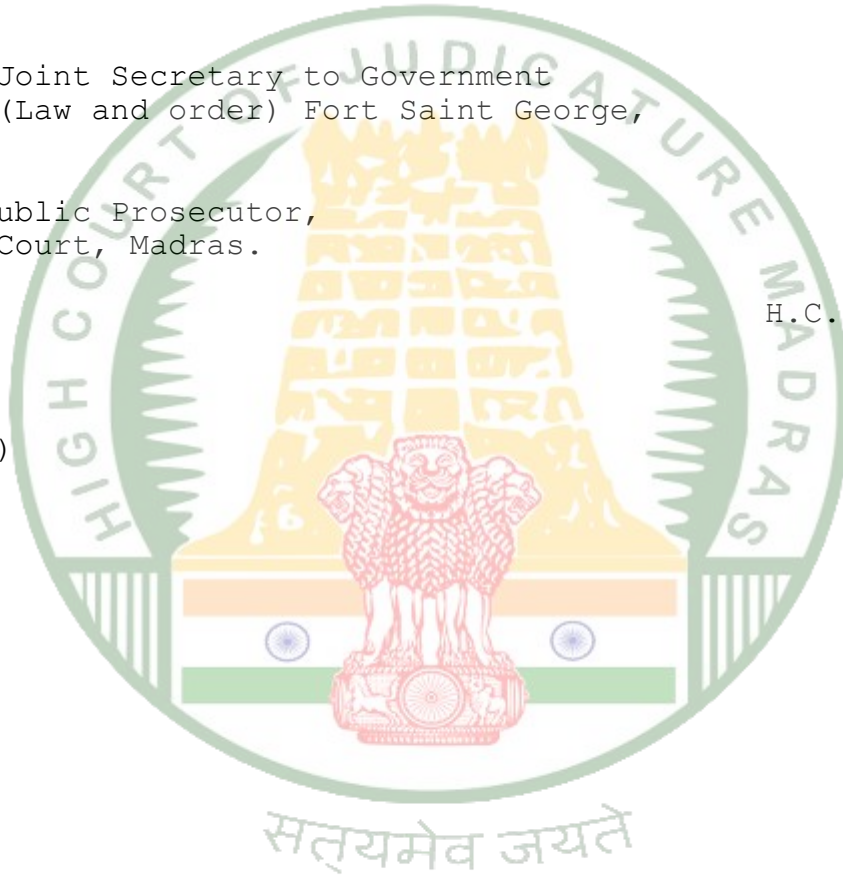
3. The Superintendent of
Central Prison, Puzhal,
Chennai

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1615/2015

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