

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.1772/2015

Poongodi

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Petitioner

Vs

1.State of Tamil Nadu
rep. by the Secretary
Home, Prohibition and Excise Department
Fort St.George
Chennai 600 009.

2.District Collector and
District Magistrate
Office of the District Collector
and District Magistrate
Salem District.

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Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the entire records relating to the petitioner's husband detention under Tamil Nadu Act 14 of 1982 vide Detention Order, dated 03.07.2015 on the file of the 2nd respondent herein made in Proceedings in C.M.P.No.29/GOONDA/C2/2015, and quash the same as illegal and consequently, to direct the respondents herein to produce the petitioner's husband, viz., Manoj, S/o.Paul Jacob, aged 29 years, before this Court and set him at liberty, who is presently detained in Central Prison, Salem.

For Petitioner : Mr.S.Sugendran

For Respondents : Mr.A.N.Thambidurai,
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.NAGAMUTHU, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in C.M.P.No.29/GOONDA/C2/2015, dated 03.07.2015, whereby, the husband of the petitioner, by name, Manoj, S/o.Paul Jacob, aged

29 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, 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" as contemplated under Section 2 (f) of Tamil Nadu Act 14 of 1982.

2. Though, many grounds have been raised in the petition, Mr.S.Sugendran, 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. He would point out that in connection with the case in Cr.No.148 of 2015 on the file of the Dheevattippatty Police Station, the detenu was remanded to judicial custody and the application filed by him seeking bail was dismissed and thereafter, no bail application was filed in connection with the said case. He filed an application seeking bail only in connection with the case in Cr.No.327 of 2015 before the Principal Sessions Judge, Salem, in C.M.P.No.1738 of 2015, in which, bail was granted. But, he was not let off, since, he has not produced sureties, still, the detaining authority in the detention order has stated that the detenu was likely to come out on bail. This conclusion arrived at by the detaining authority is based on no materials, since, the detenu had not filed any petition seeking bail in Cr.No.148 of 2015. Thus, there was no imminent possibility of the detenu coming out on bail. 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.

3.Per contra, Mr.A.N.Thambidurai, 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.

4.We have heard the learned counsel on either side and we have also perused the records carefully.

5.As could be evidenced from the detention order, in connection with the case in Cr.No.148 of 2015 on the file of the Dheevattippatty Police Station, the detenu was remanded to judicial custody and the application filed by him seeking bail was dismissed and thereafter, no bail application was filed in connection with the said case. He filed an application seeking bail only in connection with the case in Cr.No.327 of 2015 before the Principal Sessions Judge, Salem, in C.M.P.No.1738 of 2015, in which, bail was granted. But, he was not let off,

since, he has not produced sureties, still, the detaining authority in the detention order has stated that the detenu was likely to come out on bail. When the detenu has not at all moved any application for bail in the case in Cr.No.148 of 2015, it is not known as to how the detaining authority has come to the conclusion that there is imminent possibility of the detenu coming out on bail, this conclusion arrived at by the detaining authority is based on no materials. This only reflects that the detaining authority has passed the detention order in total non-application of mind, which would vitiate the detention order.

6.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.

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

8.Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 03.07.2015, 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 VI)

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सत्यमेव जयते

Sub Assistant Registrar

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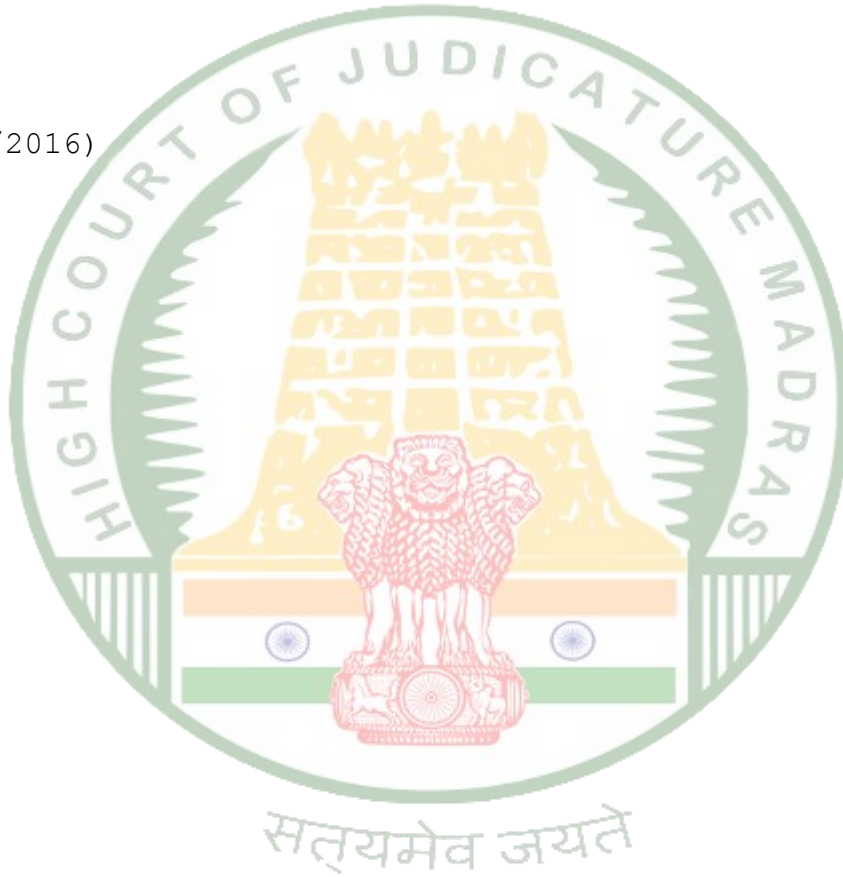
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