

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.1801/2015

Tmt Rajathi .. Petitioner/Mother of the
Detenue
Vs.

1. The State of Tamil Nadu rep.by its
Secretary to Government
Home, Prohibition & Excise [XVI] Department
Fort St George, Secretariat, Chennai 600 009.
- 2.The District Collector & District Magistrate
Krishnagiri District, Krishnagiri. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 09.07.2015 in his office Ref.SC.No.69/2015 against the petitioner's son by name Thiru Naresh Kumar, S/o.Nagaraj, aged about 28 years now confined at Central Prison, Salem, Salem District and set aside the same and direct the respondents to produce the above said detenu before this Court and set him at liberty.

For Petitioner : Mr.E.Kannadasan
For Respondents : Mr.M.Maharaja,APP

ORDER

[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 SC.No.69/2015 dated 09.07.2015, whereby the detenu/son of the petitioner, by name, Naresh Kumar, S/o.Nagaraj, aged about 28 years, was ordered to be detained under the provisions of the 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.E.Kannadasan, 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 bail applications filed by the detenu in the adverse case [Cr.No.62/2015] and in the ground case [Cr.No.353/2015] in CrI.MP.No.1068/2015 and 1067/2015 were dismissed by the learned Principal District and Sessions Judge, Krishnagiri on 06.07.2015. But, the Detaining Authority has placed reliance on a similar case to arrive at the subjective satisfaction that the detenu would be released on bail in the adverse case as well as in the ground case. It is the submission of the learned counsel that when the bail application itself has been dismissed, there is no reference to the relatives of the detenu taking steps in filing further bail application in the said cases and no material has been furnished in the Booklet to that effect. This is indicative of non-application of mind on the part of the Detaining Authority and hence, prays for quashment of the detention order.

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.

6.As evidenced from the Grounds of Detention [both in English and Vernacular Version], in particular, paragraph 4, the Detaining Authority has made a mention not only about the dismissal of the bail applications of the detenu in the ground case as well as in the adverse case by the learned Principal District and Sessions Judge, Krishnagiri, in CrI.MP.Nos.1067/2015 and 1068/2015 on 06.07.2015 ; but also similar cases to arrive at the subjective satisfaction that the detenu will be granted bail in the ground case and in the adverse case by filing another bail applications. Whereas, nowhere in the said Ground nor in the Booklet, there has been a mention about the relatives of the detenu taking steps to file further bail applications in the said cases and no material particulars have been furnished to that effect. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is

vitiated, warranting interference of this Court.

7.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.

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.

-s/d-

Assistant Registrar (CSVII)

True Copy

Sub-Assistant Registrar

AP

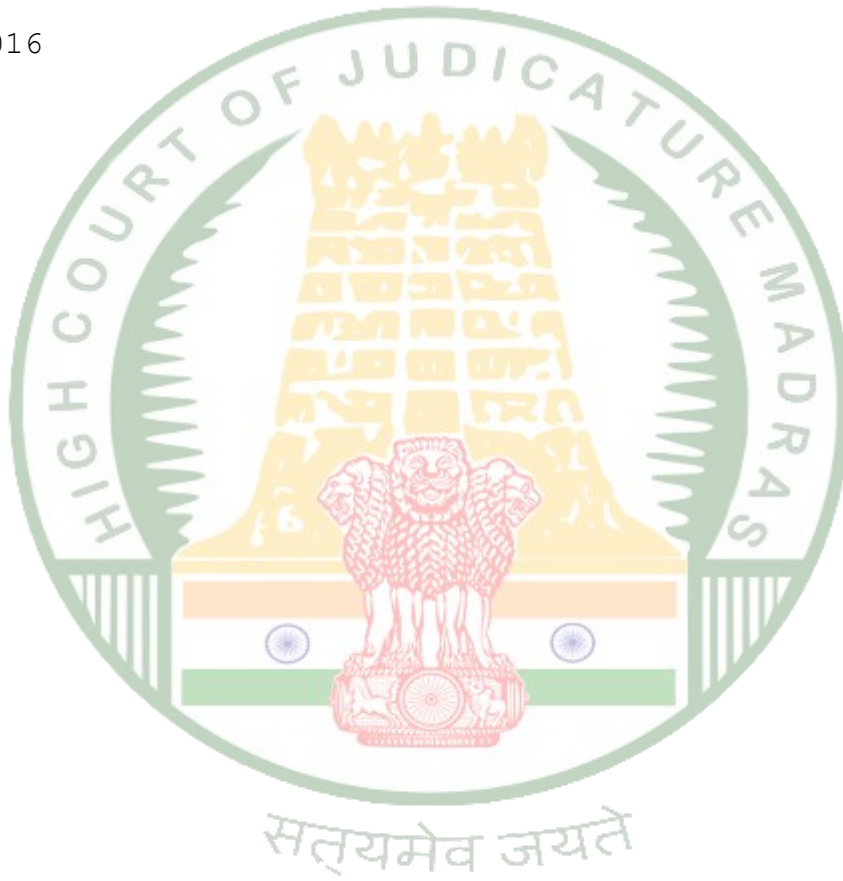
To

- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise [XVI] Department
Fort St George, Secretariat, Chennai 600 009.
- 2.The District Collector & District Magistrate
Krishnagiri District, Krishnagiri.
3. The Superintendent Central Prison, Salem
4. The Joint Secretary to Government
Public Law and order Fort St.George Chennai-9

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1801/2015

vgl (co)
aa01/02/2016



WEB COPY