

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

H.C.P.No.1819/2015

Velu

.. Petitioner

Vs.

1.The Secretary to the Government
Home, Prohibition & 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 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 17.07.2015 in Memo No.565/2015 against the brother of the petitioner, the detenu Kannan, M/A 35, son of Muthu, 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 his liberty.

For Petitioner : Mr.K.S.Kaviarasu

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 Memo No.565/2015 dated 17.07.2015, whereby the detenu/brother of the petitioner, by name, Kannan, son of Muthu, aged 35 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.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.

3.Learned counsel appearing for the petitioner submitted that in paragraph 4 of the English version of the Grounds of Detention, the Detaining Authority has stated the detenu has moved a bail petition filed in the ground case [Cr.No.1605/2015] before the learned Principal Sessions Judge, Chengalpattu in CrI.MP.No.1605/2015 and the same was dismissed on 16.07.2015 and no further bail application was filed by the detenu in the said case as on the date of passing of the detention order. The Detaining Authority has also relied on a similar case registered by R3 Ashok Nagar Police Station Cr.No.2248/2015 wherein bail was granted to an accused in CrI.MP.No.9921/2015. Whereas, in the Booklet furnished to the detenu, bail order relating to CrI.MP.No.9365/2015 in respect of one Ashok Kumar has been furnished. 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 Vernacular and English Version], in particular, paragraph 4, the Detaining Authority has made a mention about the dismissal of the bail application of the detenu in the ground case by the Court concerned. It is also seen that reliance was placed on a similar case wherein bail was granted to an accused in the case registered by R3 Ashok Nagar Police Station in CrI.MP.No.9921/2015 by the learned Principal Sessions Judge, Chennai ; whereas a perusal of the Booklet furnished before us, in particular, page Nos.185 to 191, it is evident that bail

order in Crl.MP.No.9365/2015 [both in English version and vernacular version] in respect of an accused Sathish Kumar connected with the very same case registered by R3 Ashok Nagar Police Station has been furnished and it is an irrelevant document. 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.

sd/-

Assistant Registrar (Cs-VII)

/TRUE COPY/

Sub-Assistant Registrar

AP

To

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

2.The Commissioner of Police
Chennai Police, Chennai.

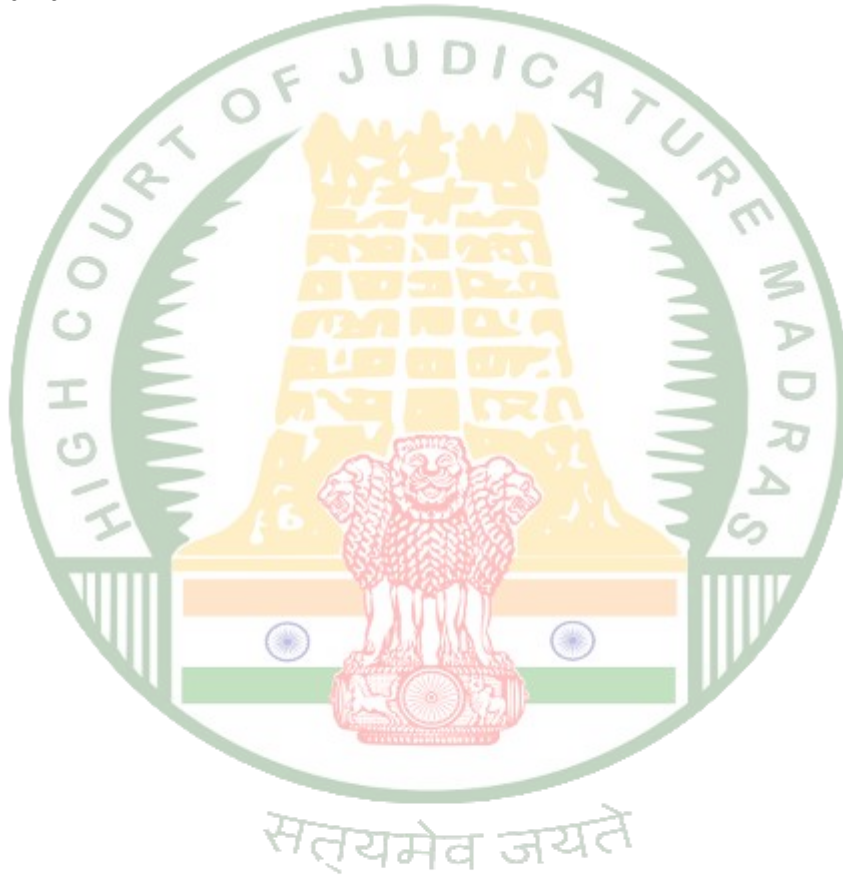
3.The Superintendent
Central Prison, Puzhal, Chennai

4.The Joint Secretary to Government,
Public (law & order),
Fort St.George, Chennai 600 009.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1819/2015

CO-BVR
JD 01/02/2016



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