

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2016

CORAM

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

H.C.P.No.1848/2015

Nataraj

..Petitioner

Vs

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

2.The District Collector and
District Magistrate
Kancheepuram District
Kancheepuram.

.. 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 son detention under Tamil Nadu Act 14 of 1982 vide Detention Order, dated 07.07.2015 on the file of the 2nd respondent herein made in Proceedings No.B.D.F.G.I.S.S.S.V No.55/2015 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner's son, viz., Naresh Babu, S/o.Nataraj, aged 23 years, before this Court and set him at liberty, who is presently detained in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.M.Baskar

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 No.B.C.D.F.G.I.S.S.S.V No.55/2015 dated 07.07.2015, whereby, the son of the petitioner, by name, Naresh Babu, S/o.Nataraj, aged 23 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, 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. As per the Grounds of Detention, dated 07.07.2015, passed by the second respondent, the detenu came to adverse notice in the following cases:

i) Adverse Cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Maraimalai Nagar PS Cr.No.352/2013	U/s.120(b), 147, 148, 342, 302 and 149 IPC
2	Maraimalai Nagar PS Cr.No.458/2015	U/s.341, 294(b), 395, 397, and 506 (ii) IPC
3	Guduvancheri PS Cr.No.501/2015	U/s.341, 294(b), 392, 397, and 506 (ii) IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Maraimalai Nagar PS Cr.No.460/2015	U/s.294(b), 395, 397, 307 and 506 (ii) IPC

3. Though, many grounds have been raised in the petition, Mr.M.Baskar, 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 in paragraph No.5 of the Grounds of Detention, it is stated that the detenu was remanded to judicial custody in connection with three cases, viz., (1) Cr.No. 458 of 2015 registered by Maraimalai Nagar Police Station; (2) Cr.No.460 of 2015 registered by Maraimalai Nagar Police Station; and (3) Cr.No.501 of 2015 registered by Guduvancheri Police Station. It is further stated in the very same paragraph that the detenu moved applications seeking bail in Cr.Nos.458 of 2015 and 460 of 2015, before the High Court and the same were pending. The detenu has not moved any application for bail in connection with the case in Cr.No.501 of 2015. While so, the Detaining Authority has concluded that there is real 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.

5.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.

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

7.As could be evidenced from paragraph No.5 of the Grounds of Detention the detenu was remanded to judicial custody in connection with three cases, viz., (1) Cr.No. 458 of 2015 registered by Maraimalai Nagar Police Station; (2) Cr.No.460 of 2015 registered by Maraimalai Nagar Police Station; and (3) Cr.No.501 of 2015 registered by Guduvancheri Police Station. It is further stated in the very same paragraph that the detenu moved applications seeking bail in Cr.Nos.458 of 2015 and 460 of 2015, before the High Court and the same were pending. Whether the detenu has moved any further bail application in connection with the case in Cr.No.501 of 2015 has not been reflected in the said paragraph. Despite the said fact, the Detaining Authority has concluded that there is real possibility of the detenu coming out on bail in the adverse cases in Cr.Nos.458 of 2015 and 501 of 2015 and the ground case in Cr.No.460 of 2015. When the detenu has not at all moved any application for bail in the case in Cr.No.501 of 2015, it is not known as to how the Detaining Authority has come to the conclusion that there is real possibility of the detenu coming out on bail. This only reflects that the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

8.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.

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

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order dated 07.07.2015 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

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
The State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George
Chennai 600 009.
2. The District Collector and
District Magistrate
Kancheepuram District
Kancheepuram.
3. The Additional Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Secretary to Government,
Public (Law & Order)
Fort St. George,
Chennai-9.

H.C.P.No.1848/2015

ctk(CO)
srg(01/03/2016)