

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM

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

H.C.P.No.1857/2015

Jeyakumar

..

Petitioner

Vs.

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

2.The Commissioner of Police
Chennai Police, O/o.The Commissioner
of Police [goondas Section], Egmore
Chennai 600 008.

3.The Superintendent of Prison
Central Prison, Puzhal, Chennai.

..

Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in BCDFGISSSV No.517/2015 dated 10.07.2015 and quash the same and direct the respondents to produce the body and person of the petitioner's brother by name Sivakumar, son of Palanivel, aged about 31 years, detained in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.P.Palanikumar

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 BCDFGISSSV No.517/2015 dated 10.07.2015, whereby the detenu/brother of the petitioner,

by name, Sivakumar, son of Palanivel, aged 31 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.P.Palanikumar, 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 detenu has been remanded in the ground case in Cr.No.1635/2015 registered by R8 Vadapalani Police Station and the bail application filed by him for the above said case in CrI.MP.No.9856/2015 on the file of the learned Principal Sessions Judge, Chennai, is pending. But the Detaining Authority, in the Grounds of Detention, has relied upon a similar case in Cr.No.301/2009 registered by R7 K.K.Nagar Police Station, wherein the accused was granted bail by this Court in CrI.OP.No.13843/2009. It is submitted that when reliance is placed on a similar case by the Detaining Authority to arrive at the subjective satisfaction, he has to place reliance only on such case, in which bail is granted by a Court similar to that of the Court/Courts where the bail applications of the detenu are pending and not the order of a superior Court. This is indicative of non-application of mind on the part of the Detaining Authority and thus, the detention order is vitiated on the above sole ground and the same is liable to be quashed.

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, in particular, paragraph 3, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case [Cr.No.1635/2015], in which case bail application is pending before the learned Principal Sessions Judge, Chennai, in CrI.MP.No.9856/2015 by placing reliance on a similar case wherein, bail was granted to an accused in a case in

Cr.No.301/2009 registered by R7 K.K.Nagar Police Station, by this Court in CrI.OP.No.13843/2009. Whenever a bail application in connection with any adverse case or ground case is pending before a lower Court and if the Detaining Authority arrives at the subjective satisfaction that the detenu would be granted bail in the said cases by placing reliance upon an order passed in a similar case, such order should be one passed by a Court subordinate to the High Court and not the order of the High Court itself, as has been done in the instant case. That too, the similar case relied upon by the Detaining Authority relates to the occurrence of the year 2009 whereas the occurrence in the ground case is of the year 2015 and there is no proximity and live link between the ground case and the similar case relied upon, necessitating the Detaining Authority to arrive at the subjective satisfaction that there is likelihood of the detenu coming out on bail in the ground case. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

7.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.

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.

WEB COPY

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

AP

To

- 1.The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police
Chennai Police, O/o.The Commissioner
of Police [goondas Section], Egmore
Chennai 600 008.
- 3.The Superintendent of Prison
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1857/2015

LRS (CO)
kk 19/1



WEB COPY