

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.1878/2015

Suresh

.. Petitioner

Vs.

1.The Secretary to the Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Chennai Police, Vepery, Chennai 600 007. ..Respondents

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 petitioner's detention under Tamil Nadu Act 14 of 1982 vide detention order dated 14.07.2015 on the file of the 2nd respondent herein made in proceedings No.543/2015 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner namely Suresh, son of Moorthy, aged 25 years, before this Court and set the petitioner at liberty from detention now petitioner detained at Central Prison-II, Puzhal, Chennai 600 066.

For petitioner : Mr.C.C,Chellappan
For respondents : Mr.M.Maharaja, APP

O R D E R

[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 No.543/2015 dated 14.07.2015, whereby the detenu/the petitioner herein, by name Suresh, son of Moorthy, aged 25 years, was ordered to be detained under the provisions of 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. As per the grounds of detention dated 14.07.2015, 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	P2 Otteri PS Cr.No.229/2015	392 IPC
2	R4 Soundarapandiyanar Angadi PS Cr.No.1413/2015	379 IPC
3	P2 Otteri PS Cr.No.496/2015	379 IPC
4	P2 Otteri PS Cr.No.511/2015	379 IPC
5	P2 Otteri PS Cr.No.515/2015	379 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	P2 Otteri PS Cr.No.517/2015	341, 336, 427, 392 r/w 397 & 506[ii] IPC

3. Though many grounds have been raised in the petition, Mr.C.C,Chellappan, 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 the detenu has been remanded to judicial custody in the adverse cases in Cr.Nos.229/2015, 1413/2015, 496/2015, 511/2015, 515/2015 registered by the P2 Otteri Police Station and R4 Soundarapandiyanar Angadi Police Station by way of PT Warrant and though a mention has been made by the Detaining Authority in respect of adverse cases No.1, 3,4 and 5 and the ground case in paragraph 4 of the Grounds of Detention, the factum of the remand of the detenu in the 2nd adverse case in Cr.No.1413/2015 has not been reflected. 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, 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 for both sides with regard to the facts and citation.

7.As could be evidenced from the Grounds of Detention, the detenu was arrested by way of P.T.Warrant in all the adverse cases in Cr.Nos.229/2015, 1413/2015, 496/2015, 511/2015 and 515/2015 registered by P2 Otteri Police Station and R4 Soundarapandiyanar Angadi Police Station respectively. But the factum of remand of the detenu in the 2nd adverse case has not been reflected in paragraph 4 of the Grounds of Detention and only a reference with regard to the pendency of the bail petitions has been made in respect of the ground case and the other adverse cases, viz., Adverse cases No.1, 3, 4 and 5. When nothing has been stated about the remand of the detenu in the said 2nd adverse case, it is not known whether the detenu has filed any bail application in the said adverse case or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse case. Hence, 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 grounds.

10. 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 II)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to the Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police
Chennai Police, Vepery, Chennai 600 007.
3. The Superintendent,
Central Prison-II
Puzhal, Chennai-66.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.1878/2015

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