

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.1901 of 2015

Valli

... Petitioner

Vs.

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

2. The District Collector & District Magistrate
Vellore District, Vellore-9.

... 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 relating to petitioner's husband detention order under Tamil Nadu Act 14 of 1982 vide detention order dated 21.07.2015 on the file of the 2nd respondent herein made in proceedings C3.D.O.No.69/2015 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's husband namely Kunichi Govindasamy @ Govindasamy @ Balaji, son of Chinnasamy, aged 28 years, before this Court and set the petitioner's husband at liberty from detention, now petitioner's husband detained at Central Prison, Vellore.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

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 C3.D.O.No.69/2015 dated 21.07.2015, whereby the detenu/husband of the petitioner, by name, Kunichi Govindasamy @ Govindasamy @ Balaji, son of Chinnaasamy, aged 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.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.

3. Learned counsel appearing for the petitioner submitted that the detenu has been remanded in the 3rd and 4th adverse cases in Cr.Nos.171/2015 and 176/2015 and also in the ground case in Cr.No.142/2015 registered by Kandili Police Station and the bail applications filed by him for the above said cases in CrI.MP.Nos.2146/2015, 2150/2015 and 2141/2015 on the file of the learned Judicial Magistrate No.2, Tirupattur, were dismissed on 24.06.2015 and the further bail applications filed by him before the learned Principal Sessions Judge, Vellore, in CrI.MP.Nos.2626/2015, 2627/2015 and 2625/2015 were also dismissed on 14.07.2015. But the Detaining Authority, in the Grounds of Detention, has relied upon a similar case in Cr.No.987/2014 registered by M8 Sathangadu Police Station, wherein one Ranjith Kumar and Sathiyaraj were granted bail by this Court in CrI.OP.No.14689/2014 on 13.06.2014. 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 bails 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 5, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case [Cr.No.142/2015] and in the 3rd and 4th adverse cases [Cr.Nos.171/2015 and 176/2015], [in which cases the bail applications filed by the detenu twice, were dismissed] by placing reliance on a similar case wherein, bail was granted to the accused persons A.K.Ranjith Kumar and Sathiyaraj, in a case in Cr.No.987/2014 registered by M8 Sathangadu Police Station, by this Court in Crl.OP.No.14689/2014 on 13.06.2014. 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 2014 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.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government
State of Tamilnadu
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
2. The District Collector & District Magistrate
Vellore District, Vellore-9.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison, Vellore.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

WEB COPY

H.C.P.No.1901 of 2015

AK(CO)
CA(19/01/2016)