

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1904/2015

Mery

.. Petitioner

Vs.

1.The Secretary to the Government,
State of Tamil Nadu,
Department of Prohibition & Excise [Home]
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Chennai City Police, Commissioner Office
Egmore, Chennai 600 008.

3.The Inspector of Police
V4 Rajamangalam Police Station
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records relating to the impugned order in BCDFGISSSV No.544/2015 dated 14.07.2015 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Karthik @ Adayar Karthik, son of Anandan, aged about 30 years, now confined at Central Prison, puzhal, Chennai before this Court and set him at liberty.

For petitioner

: Mr.Ilayaraja Kandasamy

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.544/2015 dated 14.07.2015, whereby the detenu/the husband of the petitioner herein, by name Karthik @ Adayar Karthik, aged 30 years, son of Anandan, 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	S6 Sankar Nagar PS Cr.No.1161/2014	454, 380 r/w 34 IPC
2	S6 Sankar Nagar PS Cr.No.1218/2014	454, 380 r/w 34 IPC
3	S6 Sankar Nagar PS Cr.No.1264/2014	454, 380 IPC
4	K2 Ayanavaram PS Cr.No.2380/2014	294[b], 392, 506[ii] IPC
5	K2 Ayanavaram PS Cr.No.2384/2014	294[b], 392, 506[ii] IPC
6	K2 Ayanavaram PS Cr.No.2388/2014	341, 392, 506[ii] IPC
7	K2 Ayanavaram PS Cr.2389/2014	341, 294[b], 392, 397, 336, 427, 506[ii] IPC
8	V1 Villivakkam PS Cr.No.696/2015	294[b], 341, 384, 506[ii] IPC
9	V6 Kolathur PS Cr.No.876/2015	392 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	V4 Rajamangalam PS Cr.No.562/2015	341, 294[b], 32, 336, 427, 307 and 397 IPC

3. Though many grounds have been raised in the petition, Mr.Ilayaraja Kandasamy, 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 8th and 9th in Cr.Nos.696/2015 & 876/2015 registered by the V1 Villivakkam Police Station and V6 Kolathur Police Station by way of PT Warrant and though a mention has been made by the Detaining Authority in respect of the ground case in paragraph 4 of the Grounds of Detention, the factum of the remand

of the detenu in the 8th and 9th adverse case in Cr.Nos.696/2015 and 876/2015 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 the 8th and 9th adverse cases in Cr.Nos.696/2015 and 876/2015 registered by V1 Villivakkam Police Station and V6 Kolathur Police Station respectively. But the factum of remand of the detenu in the said adverse cases has not been reflected in paragraph 4 of the Grounds of Detention and only a reference with regard to the pendency of the bail petition has been made in respect of the ground case. When nothing has been stated about the remand of the detenu in the said 8th and 9th adverse cases, it is not known whether the detenu has filed any bail applications in the said adverse cases or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse cases. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

8.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.

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.

AP

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Department of Prohibition & Excise [Home]
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
Chennai City Police, Commissioner Office
Egmore, Chennai 600 008.
- 3.The Inspector of Police
V4 Rajamangalam Police Station
Chennai.
4. The Superintendent,
Central Prison, Puzhal, Chennai.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George,
Chennai-9.
- 6.The Public Prosecutor,
High Court, Madras.

CO-VD

ths : 05.02.2016

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