

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.1914 of 2015

S.Prasanth

... Petitioner

Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Department
Secretariat, Chennai.

2. The Commissioner of Police
Chennai City.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent 27.07.2015 in Memo No.600/BCDFGIISSSV/2015 against the petitioner brother Babu @ Rajbabu, Male, aged 27 years, son of Selvaraj, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For petitioner : Mr.S.Senthil Vel

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

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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 Memo No.600/BCDFGISSSV/2015 dated 27.07.2015, whereby the brother of the petitioner by name Babu @ Rajbabu, Male, aged 27 years, son of Selvaraj, 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 27.07.2015, 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	T10 Thirumullaivoyal PS Cr.No.264/2009	147, 148, 447 & 302 IPC @ 148, 302 IPC r/w 149 IPC
2	Chengalpattu Taluk PS Cr.NO.761/2012	147, 148, 302 & 149 IPC
3	T7 Tank Factory Police Station Cr.No.489/2015	341, 294[b], 392, 506[ii] IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	T10 Thirumullaivoyal Police Station Cr.No.595/2015	341, 294[b], 336, 427, 392, 397 & 506[iii] IPC

3. Though many grounds have been raised in the petition, Mr.S.Senthil Vel, 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 3rd

adverse case in Cr.No.489/2015 registered by the T7 Tank Factory Police Station by way of PT Warrant but the said factum of the remand of the detenu in the said adverse case has not been reflected in the grounds of detention, more particularly in paragraph 4 of the Detention order. 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 Booklet furnished before us, the detenu was arrested by way of P.T.Warrant in the 3rd adverse case in Cr.No.489/2015 registered by T7 Tank Factory Police Station. The Remand Report to that effect has also been furnished in the Booklet. But the said factum of remand of the detenu in the 3rd adverse case has not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the ground case. When nothing has been stated about the remand of the detenu in the said 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 IV)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to the Government,
Home, Prohibition and Excise Department
Secretariat, Chennai..
2. The Commissioner of Police
Chennai City.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

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

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