

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.1917/2015

Jaithun

..Petitioner

Vs.

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

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

..Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent in his proceedings No.C3.D.O.No.72/2015 dated 21.07.2015 against petitioner's son namely Asif @ Mohamed Asif, aged 24 years, son of Kalandar, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.I.Paul Noble Devakumar
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 No.C3.D.O.No.72/2015 dated 21.07.2015, whereby the detenu/son of the petitioner, by name, Asif @ Mohamed Asif, aged 24 years, son of Kalandar, 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.I.Paul Noble Devakumar, 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 bail application filed by the detenu in the ground case [Cr.No.277/2015] in CrI.MP.No.1964/2015 was dismissed by the learned Principal Sessions Judge, Vellore on 16.06.2015. But, the Detaining Authority has placed reliance on a similar case to arrive at the subjective satisfaction that the detenu would be released on bail in the ground case. It is the submission of the learned counsel that when the bail application itself has been dismissed, there is no reference to the relatives of the detenu taking steps in filing further bail application in the ground case and no material has been furnished in the Booklet to that effect. This is indicative of non-application of mind on the part of the Detaining Authority and hence, prays for quashment of the detention order.

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 [both in English and Vernacular Version], in particular, paragraph 5, the Detaining Authority has made a mention not only about the dismissal of the bail application of the detenu in the ground case by the learned Principal Sessions Judge, Vellore, in CMP.No.1964/2015 on 16.06.2015 ; but also a similar case to arrive at the subjective satisfaction that the detenu will be granted bail in the ground case by filing another bail application. Whereas, nowhere in the said Ground nor in the Booklet, there has been a mention about the relatives of the detenu taking steps to file another bail application in the ground case and no material particulars have been furnished to that effect. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated, warranting interference of this Court.

7.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.

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 VII)

//True Copy//

Sub Assistant Registrar

AP

To

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

PPA(CO)
Eu 4.2.16

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