

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.1920 of 2015

Kowsalya

... Petitioner

Vs.

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

2. The Secretary to Government
Government of Tamil Nadu [Home]
Prohibition & Excise Department
Fort St George, Chennai-9.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records of the 1st respondent herein concerned in C3.D.O.No.64/2015 dated 14.07.2015 and set aside the order of detention passed therein against the detenu by name Asokan, son of Manokaran, Hindu, aged about 26 years, who is the husband of the petitioner herein, quashing the same and setting him at liberty, now detained in Central Prison, Vellore.

For petitioner : Mr.G.Vinodh Kumar

For respondents : Mr.M.Maharaja
Additional Public Prosecutor

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 first respondent vide Proceedings in C3.D.O.No.64/2015 dated 14.07.2015, whereby the husband of the petitioner by name Asokan, son of Manokaran, aged 26 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 "Bootlegger".

2. As per the grounds of detention dated 14.07.2015, passed by the first 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	Gudiyatham PEW Cr.No.127/2015	4[1]g TNP Act, 1937
2	Gudiyatham PEW Cr.No.152/2015	4[1]g TNP Act, 1937
3	Gudiyatham PEW Cr.No.172/2015	4[1]g TNP Act, 1937

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Gudiyatham PEW No.231/2015	4[1][i], 4[1][aaa], 4[1-A][ii] TNP Act, 1937

3. Though many grounds have been raised in the petition, Mr.G.Vinodh Kumar, 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 by way of formal arrest in the adverse cases in Cr.Nos.127/2015, 152/2015 and 172/2015 registered by the Gudiyatham Prohibition Enforcement Wing and though the said factum of the remand of the detenu in the said adverse cases has been reflected in the grounds of detention, more particularly in paragraph 5 of the Detention order, no reference has been made as to whether the detenu has been moved any bail applications in the said cases or has been granted bail. 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 furnished before us, the detenu was arrested by way of P.T.Warrant in the adverse cases in Cr.Nos.127/2015, 152/2015 and 172/2015 registered by Gudiyatham Prohibition Enforcement Wing. The Remand Reports to that effect has also been furnished in the Booklet. Though the said factum of remand of the detenu in the adverse cases has been reflected in paragraph 5 of the Grounds of Detention, nothing has been stated by the Detaining Authority as to whether any bail applications have been filed by the detenu in the said adverse cases or he has been granted bail in those cases. Only a reference has been made in respect of the ground case. When no reference has been made as regards the detenu filing any bail application in the said adverse cases, 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 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 first 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 District Collector & District Magistrate
Vellore District, Vellore - 9.
2. The Secretary to Government
Government of Tamil Nadu [Home]
Prohibition & Excise Department
Fort St George, Chennai-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.

H.C.P.No.1920 of 2015

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