

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

H.C.P.No.1935/2015

Tmt N.Akila

..Petitioner

Vs.

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

2.The Commissioner of Police
Chennai Police, O/o.The Commissioner
of Police [Goondas Section], Egmore
Chennai 600 008.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 13.07.2015 in Memo No.533/BCDFGISSSV/2015 against the petitioner's husband Nagaraj, son of Mukundan, aged about 36 years, who is confined at Central Prison, Puzhal, 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.V.Paarthiban

For Respondents सत्यमेव जयते 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 Memo No.533/BCDFGISSSV/2015 dated 10.07.2015, whereby the detenu/husband of the petitioner, by name, Nagaraj, son of Mukundan, aged 36 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.V.Paarthiban, 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 was granted bail in the 2nd and 4th adverse cases [Cr.Nos.1225/2014 & 1302/2014] and he has not moved any bail application in the 3rd adverse case [Cr.No.1240/2015] and the bail petition filed in the ground case [Cr.No.762/2015] was dismissed by the learned Principal Sessions Judge, Tiruvallur in CrI.MP.No.1668/2015 as on the date of passing the detention order. It is submitted that the detenu has moved another bail application in the ground case before this Court in CrI.OP.No.17390/2015 and the same is pending. But no reference has been made about the said pendency of the bail application in paragraph No.4 of the Grounds of Detention. 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, in particular, paragraph 4, the Detaining Authority has mentioned about the bail being granted to the detenu in the 2nd and 4th adverse cases and also the non-filing of the bail application in the 3rd adverse case and the dismissal of the bail application in the ground case. Whereas, a perusal of the Booklet furnished before us, in particular page Nos.339 to 345, would go to show that in pursuance to the dismissal of the bail petition in the ground case by the lower Court, the detenu has moved this Court by filing CrI.OP.No.17390/2015 and the said bail application is pending. Both the English and Vernacular versions of the said bail application is furnished in the Booklet. But, the Detaining Authority has not quoted anything about the pendency of the bail application in the Grounds of detention. 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-II)

/TRUE COPY/

Sub-Assistant Registrar

AP

To

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

2.The Commissioner of Police
Chennai Police, O/o.The Commissioner
of Police [Goondas Section], Egmore
Chennai 600 008.

3.The Superintendent
Central Prison, Puzhal, Chennai

4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1935/2015

CO-EV

JD 20/01/2016