

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.1949/2015

J.P.Usha

..Petitioner

Vs.

1. The State of Tamil Nadu, rep by its
The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Coimbatore City, Coimbatore.

3.The Superintendent of Prison
Central Prison, Coimbatore.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus calling for the entire records from the 2nd respondent in connection with order in C.No.32/G/IS/2015 dated 26.07.2015 and quash the same and produce the petitioner's husband namely P.Kumanan @ Shanthakkumar, S/o.Paul Dinakaran, aged 38 years, now confined in Central Prison, Coimbatore under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.P.Pugalenth
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 C.No.32/G/IS/2015 dated 26.07.2015, whereby the detenu/husband of the petitioner, by name, Kumanan @ Shanthakumar, son of Paul Dinakaran, aged 38 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.P.Pugalenth, 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 has been remanded in the ground case in Cr.No.394/2015 registered by Ramanathapuram Police Station and the bail application filed by him for the above said case in CrI.MP.No.2003/2015 on the file of the learned District and Sessions Judge, Coimbatore, was dismissed on 16.07.2015 and the further bail application filed before this Court in CrI.OP.No.18193/2015 was pending as on the date of passing of the detention order. But the Detaining Authority, in the Grounds of Detention, has relied upon the bail being granted to the co-accused of the detenu S.Bhuvaneswar, S.Karthikeyan and G.Balakrishnan by the learned Principal Sessions and District Judge, Coimbatore in CMP.Nos.1962/2013 and 1963/2015 respectively. It is submitted that when reliance is placed on a similar case by the Detaining Authority to arrive at the subjective satisfaction, he has to place reliance only on such case, in which bails is granted by a Court similar to that of the Court/Courts where the bail applications of the detenu are pending and not the order of a Court below. This is indicative of non-application of mind on the part of the Detaining Authority and thus, the detention order is vitiated on the above sole ground and the same is liable to be quashed.

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 7, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case [Cr.No.394/2015], in which case bail application is pending before this Court in

CrI.OP.No.18193/2015, by placing reliance on the bail granted to the co-accused persons in CMP.Nos.1962/2015 and 1963/2015 respectively by the learned Principal District and Sessions Judge, Coimbatore on 13.07.2015. Whenever a bail application in connection with any adverse case or ground case is pending before a High Court and if the Detaining Authority arrives at the subjective satisfaction that the detenu would be granted bail in the said cases by placing reliance upon an order passed in a similar case, such order should be one passed by the High Court itself and not the order of the Court below, as has been done in the instant case. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

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/-

सत्यमेव जयते
Assistant Registrar(Cs-VII)

/TRUE COPY/

Sub-Assistant Registrar

AP

To

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

2.The Commissioner of Police
Coimbatore City, Coimbatore.

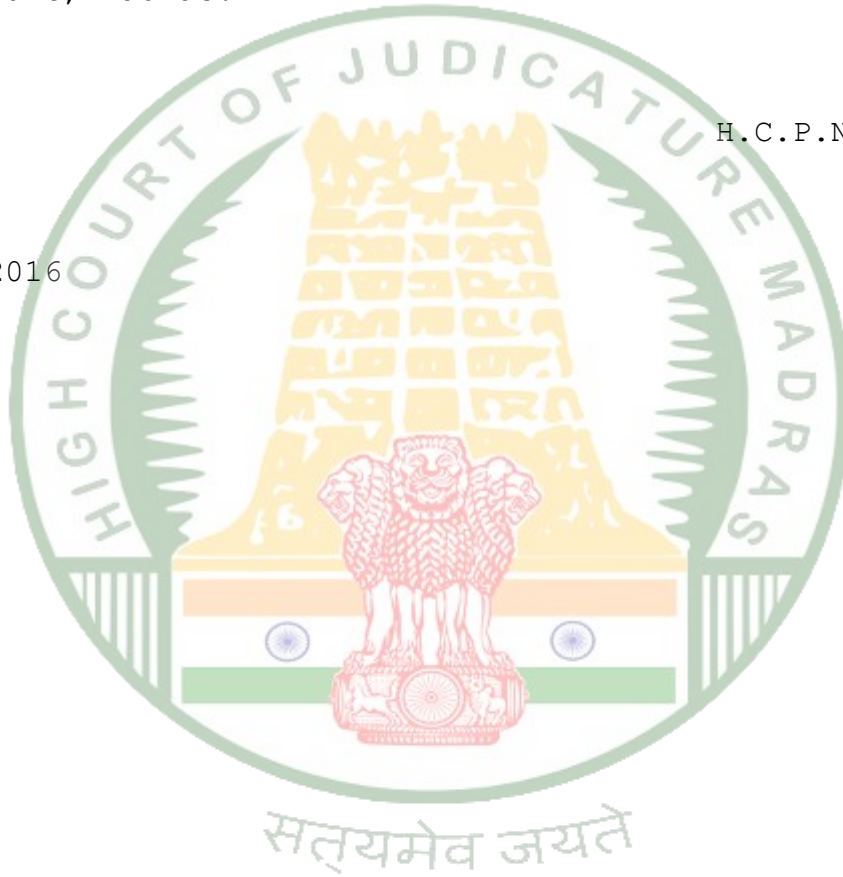
3.The Superintendent of Prison
Central Prison, Coimbatore.

4.The Joint Secretary to Government,
Public (law & order),
Fort St.George, Chennai 600 009.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1949/2015

CO-BVR
JD 01/02/2016



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