

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.1958/2015

Valarmathi

..Petitioner

Vs.

1.The Secretary to Government
State of Tamilnadu
Home, Prohibition & Excise Department
fort St George, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai, Vepery, Chennai.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the petitioner's husband by name Loganathan @ Logu, son of Kaali, aged 45 years, before this Court now confined in Central Prison, Puzhal, Chennai, set him at liberty and to call for the records pertaining to the order of detention passed in BCDFGISSSV No.649/2015 dated 30.07.2015 passed by the 2nd respondent and set aside the same.

For Petitioner : Mr.K.Thenrajan

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 BCDFGISSSV No.649/2015 dated 30.07.2015, whereby the detenu/husband of the petitioner, by name, Loganathan @ Logu, son of Kaali, aged 45 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 "Bootlegger".

2.Though many grounds have been raised in the petition, Mr.K.Thenrajan, 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 in paragraph 4 of the English version of the Grounds of Detention, the Detaining Authority has stated the detenu has moved a bail petition filed in the ground case [Cr.No.231/2015] before the learned Principal Sessions Judge, Tiruvallur in CrI.MP.No.1963/2015 and the same was pending as on the date of passing of the detention order. Whereas in the Vernacular version, the Detaining Authority has stated that the relatives are taking steps to take the detenu out on bail by filing bail application, despite the fact, the bail application was pending before the Court concerned. 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 [English Version], in particular, paragraph 4, the Detaining Authority has made a mention about the pendency of the bail application of the detenu in the ground case before the Court concerned. Whereas in the Vernacular version of the Grounds of the Detention, though the Detaining Authority has stated about the same, he has also observed that the relatives are taking steps to take the detenu out on bail, despite the factum of the pendency of the bail application in the ground case. 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 V)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government
State of Tamilnadu
Home, Prohibition & Excise Department
fort St George, Chennai 600 009.
2. The Commissioner of Police
Greater Chennai, Vepery, Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Joint Secretary to Government, Public (L&O)
Fort St. George, Chennai-9.
5. The Superintendent, Central Prison,
Puzhal, Chennai.

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