

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9.2.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.1976 of 2015

Padmavathy

.. Petitioner

Vs.

1. State of Tamil Nadu
rep by the Secretary
Home Prohibition and Excise Department
Fort St. George, Chennai - 600 009

2. The Commissioner of Police
The Commissioner Office
Egmore, Chennai - 600 008

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records relating to the detention order in Memo No.557/2015 dated 17.7.2015 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Shobanraj s/o.Annadurai the detenu, now confined in Central Prison, Vellore, Chennai before this Court and set the petitioner's son Shobanraj s/o.Annadurai aged about 25 years the detenu herein at liberty.

For Petitioner : Mr.A.Senthil Kumaran

For Respondents : Mr.A.N.Thambi Durai
Additional Public Prosecutor

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O R D E R

[Order of the Court was made by M.JAICHANDREN, J.]

This Habeas Corpus Petition has been filed by the mother of the detenu, namely, Shobanraj, aged 25 years, son of Annadurai, to issue a Writ of Habeas Corpus, to call for the records in Memo No.557/2015, dated 17.7.2015, passed by the 2nd respondent, detaining the detenu, under Section 3(1) 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 14/1982), branding him as a "Goonda", and to quash the same and to direct the respondents to produce the body and person of the detenu and set him at liberty.

2. Though many grounds have been raised in the petition, 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. The learned counsel appearing for the petitioner had submitted that the detenu has been remanded in the ground case, in Cr.No.683/2015, registered by M-8 Sathangadu Police Station and the bail application filed by him for the above said case, in CrI.M.P.No.1781 of 2015, on the file of the learned Principal District and Sessions Judge, Thiruvallur, was dismissed and the further bail application filed before this Court, in CrI.M.P.No.17516 of 2015, was pending as on the date of passing of the detention order. Though the Detaining Authority, in the Grounds of Detention, has relied upon a similar case, in which bail being granted to an accused by this Court in CrI.O.P.No.4371 of 2013, the detenu had been furnished a copy of the order passed by the Sessions Court, Chennai, in CrI.M.P.No.4371 of 2013, dated 8.4.2013. 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 bail 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.

6. As evidenced from the Grounds of Detention, in particular, paragraph 4, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case [in which case bail application is pending before this Court in CrI.O.P.No.17516/2015 subsequent to the dismissal of the earlier bail application by the Court

below], by placing reliance on the bail granted to the accused in CrI.O.P.No.4371 of 2013, by this Court. However, a perusal of the booklet supplied to the detenu would show that the detenu had been furnished a copy of the order passed by the Sessions Court, Chennai, in CrI.M.P.No.4371 of 2013, dated 8.4.2013. 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 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.

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, dated 17.7.2015, 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.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

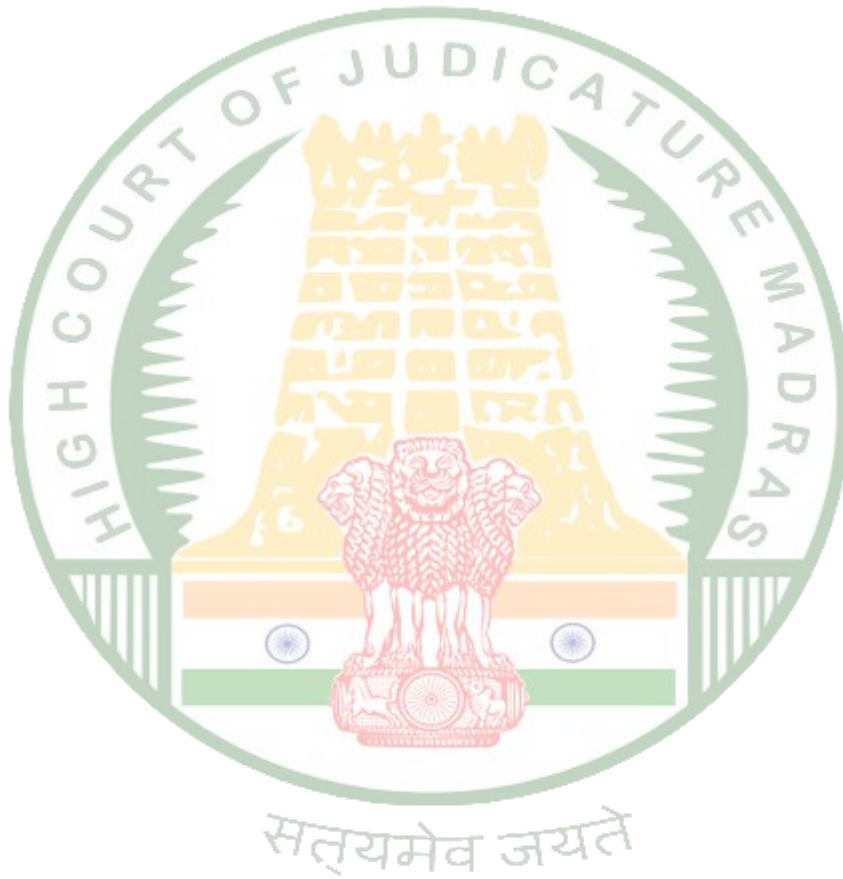
To

1. The Secretary
Home Prohibition and Excise Department
Fort St. George, Chennai - 600 009
2. The Commissioner of Police
The Commissioner Office
Egmore, Chennai - 600 008

3. The Superintendent,
Central Prison, Vellore.
4. The Joint Secretary to Govt
Public (Law & order) Dept.
Fort.St.George, Chennai 9.
5. The Public Prosecutor,
High Court, Madras.

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