

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR. JUSTICE P.N.PRAKASH

H.C.P.No.2003/2015

Mumtaz

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Petitioner

Vs.

1.The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The Commissioner of Police
Thirupur City, Thirupur District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records leading to the detention of the petitioner's son namely S.Umar Farook, son of Sheiek Mohideen, aged 23 years, under Act 14/1982 vide detention order dated 25.04.2015 on the file of the 2nd respondent made in proceedings in C.No.23/G/IS/TPR [C]/2015, quash the same and consequently direct the respondents herein to produce the body and person of S.Umar Farook, son of Sheiek Mohideen, who is lodged at Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.C.D.Sugumar

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.23/G/IS/TPR [C]/2015 dated 25.04.2015, whereby the detenu/son of the petitioner, by name, Umar Farook, son of Sheiek Mohideen, aged 23 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.C.D.Sugumar, 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 Detaining Authority has stated in the Grounds of Detention the detenu has moved a bail application in the ground case in Cr.No.260/2015 before the learned District and Sessions Judge, Thirupur in C.M.P.No.453/2015 and the same was pending as on the date of passing of the detention order. However, the detenu has been arrested in the adverse cases registered by Avinashi Police Station in Cr.Nos.365/2014, 368/2014 and 158/2015 and that he has not filed any bail applications in the said cases. However, the Detaining Authority, by placing reliance on a similar case, has arrived at the subjective satisfaction that the detenu will come out on bail in the ground case; but, he has not made any mention about any similar case to arrive at the subjective satisfaction that the detenu would be granted bail in the adverse cases in which he was arrested. By way of PT Warrant. 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 [both in English and Vernacular Version], in particular, paragraph 8, the Detaining Authority has made a mention about the real possibility of the detenu coming out on bail in the ground case (Cr.No.260/2015) by placing reliance on a similar case. A further perusal of the grounds in particular, paragraph No.1 (Tabular Column showing adverse cases), would disclose that the detenu was arrested in the adverse cases by way of PT Warrant and that he has not filed any bail applications in the said cases. Nowhere in paragraph No.8, the Detaining Authority has cited any similar case to arrive at the subjective satisfaction

that there is likelihood of the detenu coming out on bail in the said adverse cases. 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

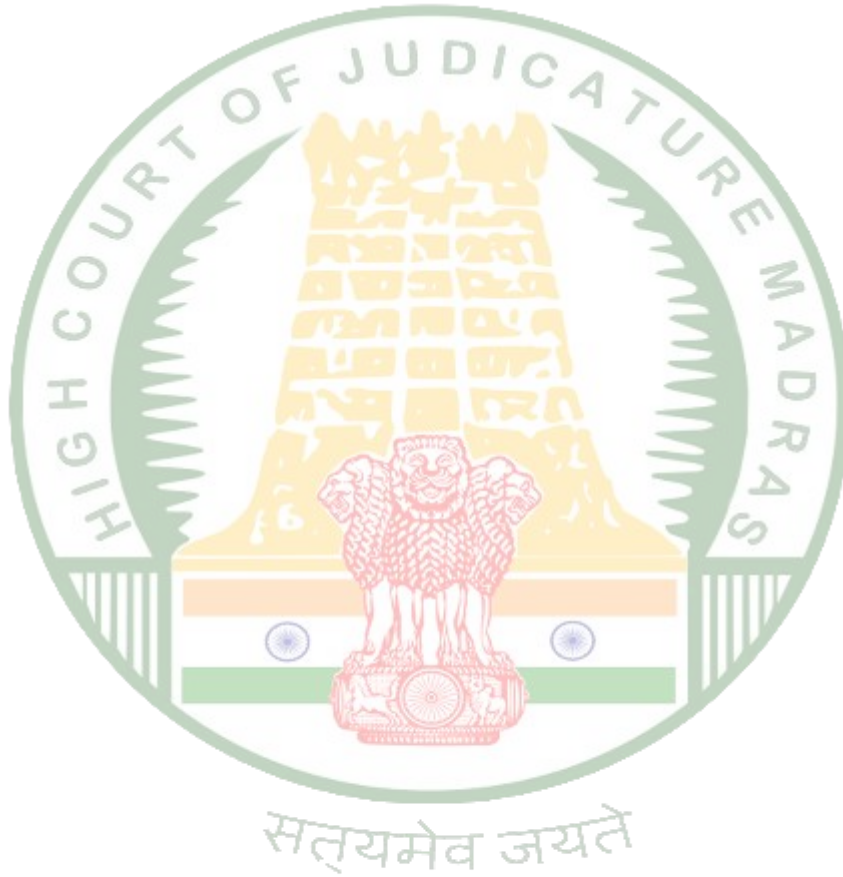
- 1.The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
- 2.The Commissioner of Police
Thirupur City, Thirupur District.
- 3.The Superintendent,
Central Prison,
Coimbatore (In duplicate for communication to
detenue)

4.The Joint Secretary to Government,
Public (Law & Orders),
Fort St. George, Chennai 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2003/2015

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