

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM

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

H.C.P.No.2013/2015

Kathija Beevi

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Petitioner

Vs.

1.State of Tamilnadu rep
Secretary of State,
Prohibition & Excise Department
St George Fort, Chennai 600 009.

2.The Commissioner of Police
Poonamallee High Road, Vepery
Chennai 600007.

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Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling upon the production of the records relating to the detention order dated 22.07.2015 made in detention order Memo No.586/BCDFGISSSV/2015 passed by the 2nd respondent herein, quash the same and direct the respondents to produce the body or person of the petitioner's son Asif Ahamed, son of Khaleem Ahamed, aged about 22 years branded as Goonda and now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.C.Mohan Raj

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 Memo No.586/BCDFGISSSV/2015 dated 22.07.2015, whereby the detenu/son of the petitioner, by name, Asif Ahamed, son of Khaleem Ahamed,

aged about 22 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.Pugalthi, 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.1831/2015 registered by Ramanathapuram Police Station and the bail application filed by him for the above said case in Cr1.MP.No.9415/2015 on the file of the learned Principal Sessions Judge, Chennai, was dismissed on 30.06.2015 and the further bail application filed before this Court in Cr1.OP.No.16460/2015 was also dismissed on 06.07.2015 and the further bail application filed by him before this Court in Cr1.OP.No.17951/2015 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 an accused by the learned Principal Sessions Judge, Chennai in Cr1.MP.No.2805/2015. 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 with regard to the facts.

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 Crl.OP.No.17951/2015 subsequent the dismissal of the earlier bail applications by the Court below and by this Court on 30.06.2015 and 06.07.2015 respectively], by placing reliance on the bail granted to the accused in Crl.MP.No.2805/2015 by the learned Principal Sessions Judge, Chennai. 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 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/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

AP

To

1.The Secretary of State,
State of Tamilnadu
Prohibition & Excise Department
St George Fort, Chennai 600 009.

2.The Commissioner of Police
Poonamallee High Road, Vepery
Chennai 600007.

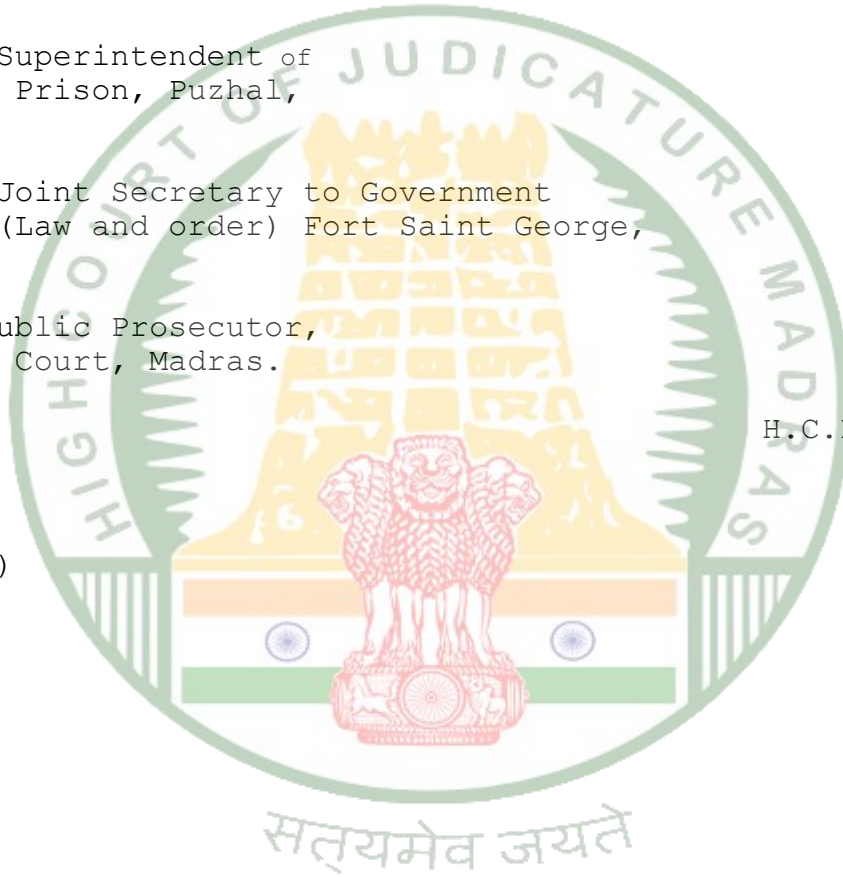
3. The Superintendent of
Central Prison, Puzhal,
Chennai

4. The Joint Secretary to Government
Public (Law and order) Fort Saint George,
Chennai

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2013/2015

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