

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

H.C.P.No.2221 of 2015

Vasanthi

... Petitioner

Vs.

1. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat
Chennai 600 009.

2. The Commissioner of Police
Chennai Police
Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records pertaining to the order of detention passed by the 2nd respondent in BCDFGISSSV No.728/2015, dated 13.08.2015, against the son of the petitioner, viz., Rajesh Khanna, Male, aged 26 years, S/o.Vijayakumar, who is confined at Central Prison, Puzhal, Chennai, and to set aside the same and consequently, to direct the respondents to produce the detenu before this Court and to set him at liberty.

For Petitioner : Mr.K.S.Kaviarasu

For Respondents : Mr.A.N.Thambidurai,
Additional Public Prosecutor

ORDER

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

Petitioner is the mother of the detenu, viz., Rajesh Khanna, and challenge is made to the order of detention passed by the second respondent vide proceedings in BCDFGISSSV No.728 of 2015, dated 13.08.2015, under which the detenu has been branded as a "Goonda" and detained under the Tamil Nadu Act 14 of 1982.

2. As per the grounds of detention dated 13.08.2015, the detenu came to the adverse notice in the following two cases:-

1. M-1 Madhavaram Police Station Cr.No.1375 of 2012 for the alleged commission of the offences u/s. 302, 201 r/w. 34 IPC and the offence said to have taken place at 20.00 hours on 21.07.2012.
2. V-4 Rajamangalam Police Station Cr.No.604 of 2015 for the alleged commission of the offences u/s. 384 and 506 (ii) IPC and the offence said to have taken place at 11.00 hours on 11.07.2015.

3. In the grounds of detention, it is stated among other things that on 12.07.2015, at about 10.30 hours, the detenu wrongfully restrained the complainant and threatened him and also tried to extract money. When the complainant raised hue and cry, the detenu brandished a knife and threatened the complainant with dire consequences. When the public tried to apprehend the detenu, he threatened them. At that time, the police personnel came there, surrounded and apprehended him and took him to the police station and a case was registered against him in Crime No.899 of 2015 by the V-6 Kolathur Police Station for the commission of the offences under Sections 341, 294(b), 323, 336, 397 and 506 (ii) IPC (which is the ground case). The detenu was arrested on 12.07.2015, at about 11.15 hours. On such arrest, he voluntarily came forward to give a confession statement, which was recorded in the presence of witnesses, wherein, he has admitted that he has involved in the second adverse case in Crime No.604 of 2015. The detaining authority on being satisfied with the materials placed before him by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order by committing the grave crime, has clamped the order of detention.

4. Mr. K.S.Kaviarasu, the learned counsel appearing for the petitioner would submit that as per paragraph No.4 of the grounds of detention, the detenu moved an application for bail in the ground case in CrI.M.P.No.12731 of 2015 and the same is pending. Though, while describing the second adverse case, it has been stated that the detenu is in custody in connection with the second adverse also, but, the fact remains, it is not made clear as whether the detenu has been enlarged on bail in connection with the second adverse case. Therefore, there is no application of mind on the part of the detaining authority in arriving at the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulging in further activities, which are prejudicial to the maintenance of public order. Hence, on this sole ground, the order of detention is vitiated and hence, prays for the quashment of the said order.

5.Per contra, Mr.A.N.Thambidurai, the learned Additional Public Prosecutor would contend that on due and proper application of mind, the detaining authority has rightly arrived at the subjective satisfaction and hence, prays for the dismissal of the petition.

6. As rightly pointed out by the learned counsel for the petitioner, the detenu is in custody in connection with the second adverse case also. But, in paragraph No.4 of the grounds of detention, it is merely stated that the detenu has made an application for bail in connection with the ground case. There is no whisper regarding the fact that any application for bail has been filed in respect of the second adverse case. In the absence of such a vital material, the subjective satisfaction arrived at by the detaining authority as to the real and imminent possibility of the detenu coming out on bail and indulging in further activities, which are prejudicial to the maintenance of public order, is vitiated on the ground of total non-application of mind. Hence, on this sole ground, the order of detention is liable to be quashed.

7. In the result, this Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in Memo No.728/BCDFGISSSV/2015, dated 13.08.2015, is quashed. The detenu is ordered to be set at liberty forthwith unless his custody/detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

paa

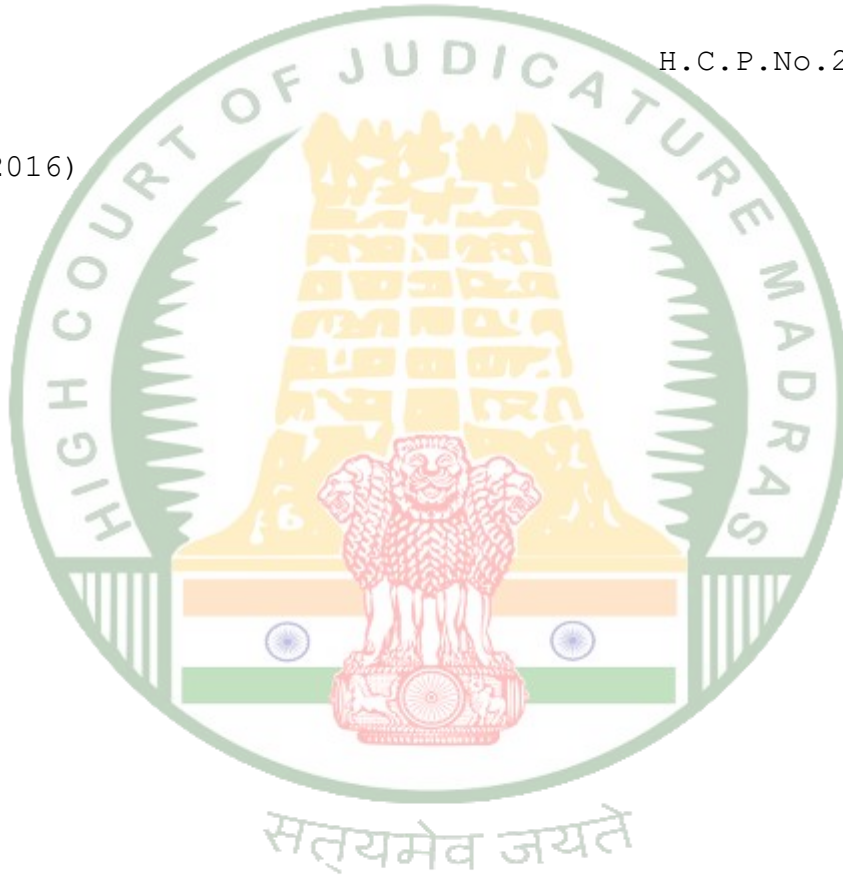
To

1. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat
Chennai 600 009.
2. The Commissioner of Police
Chennai Police
Chennai

3. The Superintendent,
Central Prison,
Puzhal, Chennai 66.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Additional Public Prosecutor,
High Court, Madras.

H.C.P.No.2221 of 2015

SV(CO)
CA(04/04/2016)



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