

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

CORAM

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

H.C.P.No.2250 of 2015

Selvi

... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu
Prohibition & Excise Department [Home]
Secretariat, Fort St George, Chennai 600 009.
2. The District Collector &
District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records on the file of the 2nd respondent in D.O.No.38/2015-C2 dated 13.07.2015 against the petitioner's son Karuna @ Karunakaran, male aged 23 years, son of Baskar, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

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

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ORDER

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings in D.O.No.38/2015-C2 dated 13.07.2015, whereby the detenu/petitioner's son, viz. Karuna @ Karunamakaran, Son of Baskar, 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.D.Balaji, 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 not moved any bail application in the ground case in Cr.No.352/2015 and adverse cases in Cr.Nos.133/2014, 137/2014, 153/2014, 419/2014, 420/2014, 12/2015, 66/2015, 130/2015, 146/2015, 279/2015 and 280/2015 as on the date of passing of the detention order. But the Detaining Authority, in the Grounds of Detention, has stated that the relatives are taking steps to file bail applications in the ground case and the adverse cases. But, the said factum has not been reflected in the Special Report of the Sponsoring Authority. 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 5, the Detaining Authority has stated that the "Sponsoring Authority has stated that the relatives of Thiru Karuna @ Karunakaran are taking action to take him on bail by filing bail applications in the ground case and adverse cases before the appropriate Court...". But, a perusal of the Booklet, in particular, the Special Report of the Sponsoring Authority, it is evident that nothing has been stated by the Sponsoring Authority to the effect of the relatives taking steps to file bail applications in the said cases and no statements of the relatives have been recorded to that effect. 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 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 IV)

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Sub Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu
Prohibition & Excise Department [Home]
Secretariat, Fort St George, Chennai 600 009.
2. The District Collector &
District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.
3. The Superintendent,
Central Prison,
Vellore.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2250 of 2015

SV(CO)
CA(30/03/2016)