IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2016

CORAM:

THE HONOURABLE MR . JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

H.C.P.No.2365 of 2015

P.Bharathi ... Petitioner

-Vs-

1.The Government of Tamil Nadu
rep by its Secretary, Home,
Prohibition and Excise (XVI) Department
Fort St.George
Chennai 600 009.

2.The District Magistrate and District Collector
Office of the District Magistrate and District Collector
Tiruppur District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records in detention order in Cr.M.P.No.17/Goonda/2015 dated 26.08.2015, on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of the petitioner husband Premkumar, aged about 26 years, the detenu now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.R.Vijayakumar
For Respondents : Mr.A.N.Thambidurai
Addl. 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 wife of the detenu, to issue a Writ of Habeas Corpus, calling for the records relating to the impugned order passed by the 2nd respondent in Cr.M.P.No.17/Goonda/2015 dated 26.08.2015, detaining the detenu, namely Premkumar, aged about 26 years, S/o

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Rajendiran, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), branding him as a "Goonda" as contemplated u/s 2(f) of the Tamil Nadu Act 14 of 1982, and to quash the same, produce him before this Court and to set him at liberty.

2.Though many grounds have been raised in the petition, Mr.R.Vijayakumar, 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. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.481/2015 registered by Udumalipettai Police Station and he has not filed any bail application in the ground case as on the date of the passing of the detention order. But the Detaining Authority has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the ground case. The learned counsel would add that admittedly, in this case, when the detenu has not filed any bail application, there is no real possibility of the detenu coming out on bail. Thus, the detention order is vitiated on this 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 and citation.

6.As could be seen from the above ground in the order of detention, the detenu is in remand in the ground case [Cr.No.481/2015] and he has not filed bail application in the ground case as on the date of passing of the detention order. When no bail application is filed, there is no real possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility of the detenu coming out on bail in the ground case, would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority.

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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 grounds.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order dated 26.08.2015 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.

Sd/-
Assistant Registrar(J)

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Sub Assistant Registrar

To

1.The Government of Tamil Nadu
rep by its Secretary, Home,
Prohibition and Excise (XVI) Department
Fort St.George, Chennai 600 009.

2.The District Magistrate and District Collector
Office of the District Magistrate and District Collector
Tiruppur District.

3.The Superintendent,
Central Prison, Coimbatore.

4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

5.The Public Prosecutor,
Madras High Court,
Chennai.

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