

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.2518 of 2015

Thiru Selvaraj @ Selvam

... Petitioner

Vs.

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

2. The Commissioner of Police of Chennai
Greater Chennai, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the respondent to produce the detenu Selvaraj @ Selvam, son of Moorthy, before this Court who is presently lodged at Central Prison, Puzhal, Chennai in Memo No.774/BCDFGISSSV/2015 dated 20.08.2015 and set him at liberty.

For Petitioner : Mr.N.Sivabharathi

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

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 BCDFGISSSV No.774/2015 dated 20.08.2015, whereby the detenu/petitioner herein, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sexual 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.N.Sivabharathi, 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 was granted bail in the 3rd adverse case in Cr.No.1916/2015 on the file of J2 Adayar Police Station, in CrI.MP.No.1941/2015 by the learned Metropolitan Magistrate, Saidapet, Chennai on 05.08.2015 and he is yet to offer sureties in the said case. It is further submitted that the bail applications filed thrice in the ground case [Cr.No.2021/2015] were dismissed by the learned Principal Sessions Judge on 24.07.2015 ; 04.08.2015 and 18.08.2015 in CrI.MP.Nos.11316/2015 ; 12271/2015 and 12865/2015 respectively 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 application in the said ground case. 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 4, the Detaining Authority has stated that the "Sponsoring Authority stated that Thiru Selvaraj @ Selvam's relatives are taking action to take him out on bail in J2 Adayar Police Station Cr.No.2021/2015 by filing another bail application 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 application in the said case 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 III)

//True Copy//

AP

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police of Chennai
Greater Chennai, Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to Mr.N.Sivabharathi, Advocate, S.R.No.16232

H.C.P.No.2518 of 2015

SVI (CO)

CA(30/03/2016)