

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2016

CORAM

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

H.C.P. No. 2539 of 2015

Thakkalipondan @ Chinnasamy ..Petitioner

Vs.

1. The District Collector
and District Magistrate,
Erode District, Erode.
2. The State of Tamil Nadu
rep. By its Secretary,
Prohibition & Excise Dept.,
Fort St. George,
Chennai - 600 009. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Habeas Corpus to call for the entire records in connection with the order of detention passed by the first respondent dated 01.08.2015 in Cr.M.P. No. 28/Sexual Offender/2015 C-1 Thakkalipondan @ Chinnasamy, S/o. Palani, Male, aged 40 years, against the petitioner, who is confined at Central Prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty forthwith.

For Petitioner :: Mr.A.K. Manojkumar

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

O R D E R

(Order of the Court was made by S. NAGAMUTHU, J.)

Challenge is made to the order of detention passed by the first respondent vide Proceedings in Cr.M.P. No. 28/Sexual Offender/2015 C-1 dated 01.08.2015, whereby, the petitioner, by name, Thakkalipondan @ Chinnasamy, aged 40 years, 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, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "Sexual Offender" as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982.

2. Though, many grounds have been raised in the petition, MrA.K. Manojkumar, 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. He would point out that in connection with the case in Cr.No.202 of 2015 on the file of the Kavundapadi Police Station, the detenu is lodged at District Prison, Gobichettipalayam, as a remand prisoner and there is no statement that he has moved any application for bail in connection with the said case. However, the detaining authority, in paragraph No.5 of the detention order, stating that in a similar case registered in Sathyamangalam All Women Police Station in Crime No. 12/2014 under Section 366(A) I.P.C. Altered into 376 IPC and 3 and 4 of Protection of Children from sexual offences Act, 2012, the accused therein, namely, Vadivel, was released by order dated 08.09.2014 in CrI.O.P. No. 24556 of 2014, by this Court, has passed the detention order. This conclusion arrived at by the detaining authority is based on no materials, since, the detenu had not filed any petition seeking bail in Cr.No.202 of 2015. Thus, there was no imminent possibility of the detenu coming out on bail. This is indicative of the non-application of mind on the part of the detaining authority and hence, submitted that the detention order is vitiated and the same is liable to be quashed.

3.Per contra, Mr.A.N.Thambidurai, 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.

4.We have heard the learned counsel on either side and we have also perused the records carefully.

5.As could be evidenced from the detention order, in connection with the case in Cr.No.202 of 2015 on the file of the Kavundapadi Police Station, the detenu is lodged at District Prison, Gobichettipalayam, as remand prisoner and there is no statement that he has moved any application for bail. When the detenu has not at all moved any application for bail in the case in Cr.No.202 of 2015, it is not known as to how the detaining authority has come to the conclusion that there is imminent possibility of the detenu coming out on bail. This conclusion arrived at by the detaining authority is based on no materials. This only reflects that the detaining authority has

passed the detention order in total non-application of mind, which would vitiate the detention order.

6.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.

7.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned ground.

8.Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 01.08.2015, passed by the first respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The District Collector
and District Magistrate,
Erode District, Erode.

2. The Secretary
The State of Tamil Nadu
Prohibition & Excise Dept.,
Fort St. George,
Chennai - 600 009.

3. The Public Prosecutor,
High Court, Madras.

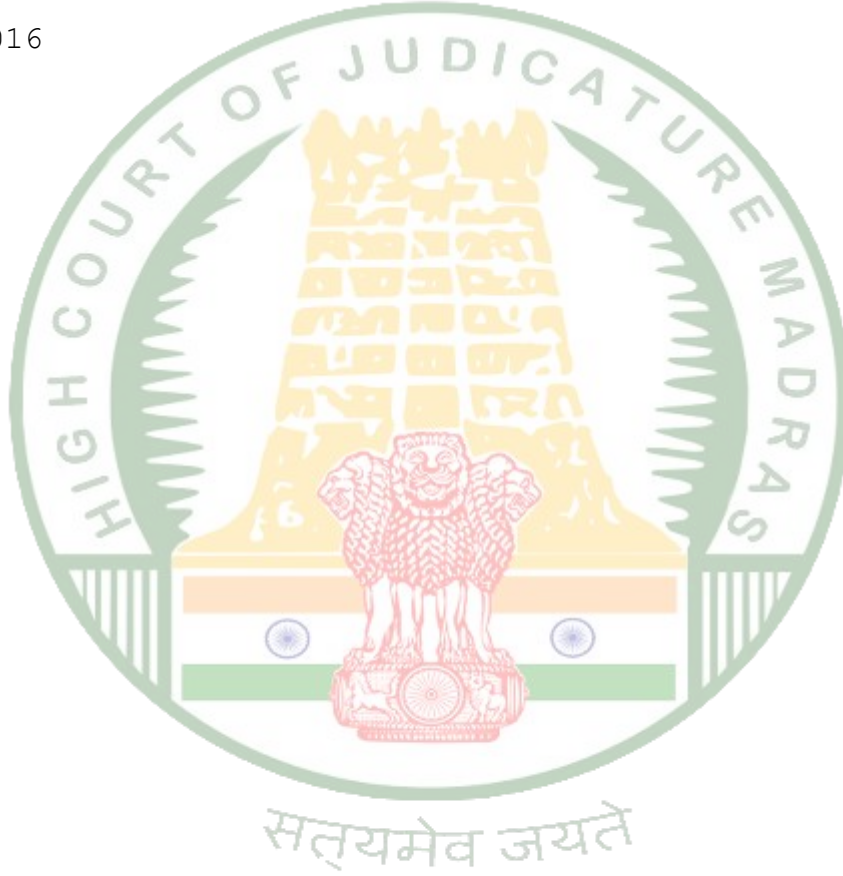
4.The Superintendent
Central Prison,
Coimbatore

5.The Joint Secretary to Government
Public Law and Order
Fort St.George Chennai-9

+1 cc to Mr.A.K.Manoj Kumar Advocate sr.19155

H.C.P. No. 2539 of 2015

aa26/04/2016



WEB COPY