

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

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THE HON'BLE DR.JUSTICE S.TAMILVANAN
and
THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

H.C.P.No.2554 of 2015

M.Sadiq Basha

... Petitioner

-Vs-

1.The State rep. by
The Commissioner of Police,
Chennai District, Chennai.

2.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise (IX) Department,
Secretariat, St. George Fort,
Chennai-600 009.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus calling for the records of the first respondent in T.P.D.A. 6777 dated 22.07.2015 (detention order BCDFGISSSV No.580/2015, dated 22.07.2015) setting aside the order of detention passed therein dated 22.07.2015 and directing the respondents to produce the detenu, by name, Sadiq Basha, son of Mohamed Amanullah, before this Court, now detained in Central Prison, Puzhal and setting him at liberty.

For petitioner : M/s.M.Shreedhar and Associates

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

O R D E R

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

Challenge is made to the order of detention passed by the first respondent in BCDFGISSSV No.580/2015, dated 22.07.2015 whereby the petitioner/detenu, by name, Sadiq Basha, son of Mohamed Amanullah, 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 the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he mainly focused his arguments on the ground that non application of mind on the part of the detaining authority.

3. Learned counsel appearing for the petitioner submitted that the detenu was remanded in the ground case in Cr.No.1867/2015 and in the adverse case in Cr.No.964/2015 registered by J-8 Neelankarai Police Station and he was granted bail by this Court in the said cases in CrI.OP.Nos.17452/2015 and 17501/2015 respectively on 20.07.2015. But, he is yet to offer sureties as on the date of passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the said cases, without relying upon any similar case. He adds that absence of mentioning any similar case would vitiate the order of detention. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind.

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 paragraph 4 of the grounds of detention, detenu was remanded in the ground case in Cr.No.1867/2015 and in the adverse case in Cr.No.964/2015 registered by J-8 Neelankarai Police Station and he was granted bail by this Court in the said cases in CrI.OP.Nos.17452/2015 and 17501/2015 on 20.07.2015. But, he is yet to offer sureties as on the date of passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the said cases, without relying upon any similar case. This would show that the Detaining Authority passed the order of detention mechanically and without application of mind and the facts do not justify the detention. Therefore, the impugned order is passed on mere Ipse-dixit and the order of detention cannot be sustained in the eye of law.

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 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.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

H.C.P.No.2554 of 2015

KJI (CO)
CA(18/02/2016)