

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

CORAM

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

H.C.P.No.2567/2015

Simithra .. Petitioner (Wife)

Vs

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

2.The District Magistrate and
District Collector,
Tiruppur District,
Tiruppur.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Cr.M.P.No.14/Goonda/2015 dated 25.08.2015 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the petitioner's husband Madhan @ Selvakumar, son of Natarajan, aged 27 years, now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Ms.R.Subhadra Devi

For Respondents : Mr.A.N.Thambidurai, APP

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 Cr.M.P.No.14/Goonda/2015 dated 25.08.2015, whereby the husband of the petitioner/the detenu herein, viz., Madhan @ Selvakumar, son of Natarajan, aged 27 years, 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. As per the grounds of detention, dated 25.08.2015, passed by the second respondent, the detenu came to adverse notice in the following cases:

i) Adverse cases:

Sl Nos .	Name of the Police station and Crime No.	Section of law
1	Sulur PS, Coimbatore District Cr.No.641/2011	395 r/w.396, 397 & 302 IPC
2	Palani PS, Dindigul District Cr.No.315/2012	379 IPC
3	Dharapuram PS, Tiruppur District, Cr.No.577/2012	392 IPC
4	Samynathapuram PS, Dindigul District, Cr.No.198/2014	392 IPC
5.	Uthiyur PS. Tiruppur District, Cr.No.56/2015	392 IPC
6	Uthukuzhi PS, Tiruppur District, Cr.No.102/2015	394 IPC
7	Vaangal PS, Karur District, Cr.N.37/2015	392 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Uthukuzhi PS, Tiruppur District Cr.No.140/2015	342, 392, 506(i) IPC

3. Though many grounds have been raised in the petition, Ms.R.Subhadra Devi, the learned counsel appearing for the petitioner, confines her argument only in respect of the non-application of mind on the part of the detaining authority, in passing the order of detention.

4. According to the learned counsel appearing for the petitioner, the detenu has been in remand, in the ground case, in Cr.No.140/2015, registered by Uthukuzhi Police Station and the detenu had not moved any bail application in the ground case, as on the date of the 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 ground case. But, the said factum has not been reflected in the Special Report of the Sponsoring Authority. This is indicative of the 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.

5.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.

6.We have heard the learned counsel for both sides with regard to the facts of the case.

7.As evidenced from the Grounds of Detention, in particular, paragraph 5, the Detaining Authority has stated that the "Sponsoring Authority has stated that the accused Thiru. madhan @ Selvakumar's family is taking necessary steps to file bail applicaiton in cr.No.140/2015 before the appropriate Court.". But, from 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 are 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 it is liable to be quashed on this ground alone.

8.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 had been passed, following the procedure established by law, maticulously. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with the situation, taking recourse to the preventive detention law is illegal.

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

10. 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(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Government of Tamilnadu, rep. by its
Principal Secretary, Home, Prohibition
and Excise (XVI) Department,
Fort St. George,
Chennai-600 009.
- 2.The District Magistrate and
District Collector,
Tiruppur District,
Tiruppur.
- 3.The Superintendent of Police,
Central Prison,
Coimbatore.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

WEB COPY

H.C.P.No.2567/2015

sr(CO)
srg(26/04/2016)