

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.2.2016

CORAM

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

H.C.P.No.2585 of 2015

Muthulingam

... Petitioner

Vs.

1. The Secretary to the Government
Home Prohibition & Excise Department
Government of Tamil Nadu
Fort St. George,
Chennai - 600 009

2. The District Magistrate and
District Collector
Salem District
Salem

.... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records relating to the second respondent pertaining to the detention order made in C.M.P.No.40/B.L.A/C2/2015 dated 28.9.2015 in detaining the detenu under Section 2(b) of the Tamil Nadu Act 14/1982 as Boot Legger and quash the same and direct the respondents to produce the said detenu namely Suresh @ Suresh Kumar s/o.Sellamuthu, aged about 32 years who is detained at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.D.Veerasekaran

For Respondents : Mr.A.N.Thambi Durai
Additional Public Prosecutor

O R D E R

[Order of the Court was made by M.JAICHANDREN, J.]

This Habeas Corpus Petition has been filed by the younger brother of the detenu, namely, Suresh @ Suresh Kumar, aged 32 years, son of Sellamuthu, to issue a Writ of Habeas Corpus, to call for the records in C.M.P.No.40/B.L.A/C2/2015 dated 28.9.2015, passed by the 2nd respondent, detaining the detenu, under Section 3(1) 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 14/1982), branding him as a "Goonda", and to quash the same and to direct the respondents to produce the body and person of the detenu and set him at liberty.

2. Though many grounds have been raised in the petition, 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. The learned counsel appearing for the petitioner submitted that the bail application in Crl.M.P.No.2657 of 2015 filed by the detenu in respect of the Crime No.504/2015, has been dismissed by the learned Principal Sessions Judge, Salem, on 26.8.2015 and the further bail application filed before this Court in Crl.O.P.No.22429 of 2015, has also been dismissed on 8.9.2015. Further, the Detaining Authority has stated that the Inspector of Police, in a special report, has stated that the relatives of the detenu are taking steps to file a bail application before the appropriate Court. However, no statements had been recorded from the relatives of the detenu by the Inspector of Police in support of his claim that the relatives of the detenu are taking steps to file a bail application before the appropriate Court. No special report had been placed before the Detaining Authority to arrive at such a conclusion. Further, the statement said to have been made by the relatives of the detenu is not furnished to the detenu. 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 3, the Detaining Authority has stated that the bail application in Crl.M.P.No.2657 of 2015 filed by the detenu in respect of the Crime No.504/2015, has been dismissed by the learned Principal Sessions Judge, Salem, on 26.8.2015 and the further bail application filed before this Court in Crl.O.P.No.22429 of 2015, has also been dismissed, on 8.9.2015. Further, the Inspector of Police, in a special report, has stated that the relatives of the detenu are taking steps to file a bail application before the appropriate Court. However, no statements had been recorded from the relatives of the detenu by the Inspector of Police in support of his claim that the relatives of the detenu are taking steps to file a bail application before the appropriate Court. No special report had been placed before the Detaining Authority to arrive at such a conclusion. Further, the statement said to have been made by the relatives of the detenu is not furnished to the detenu. 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 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 ground.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order dated 28.9.2015 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(CS VII)

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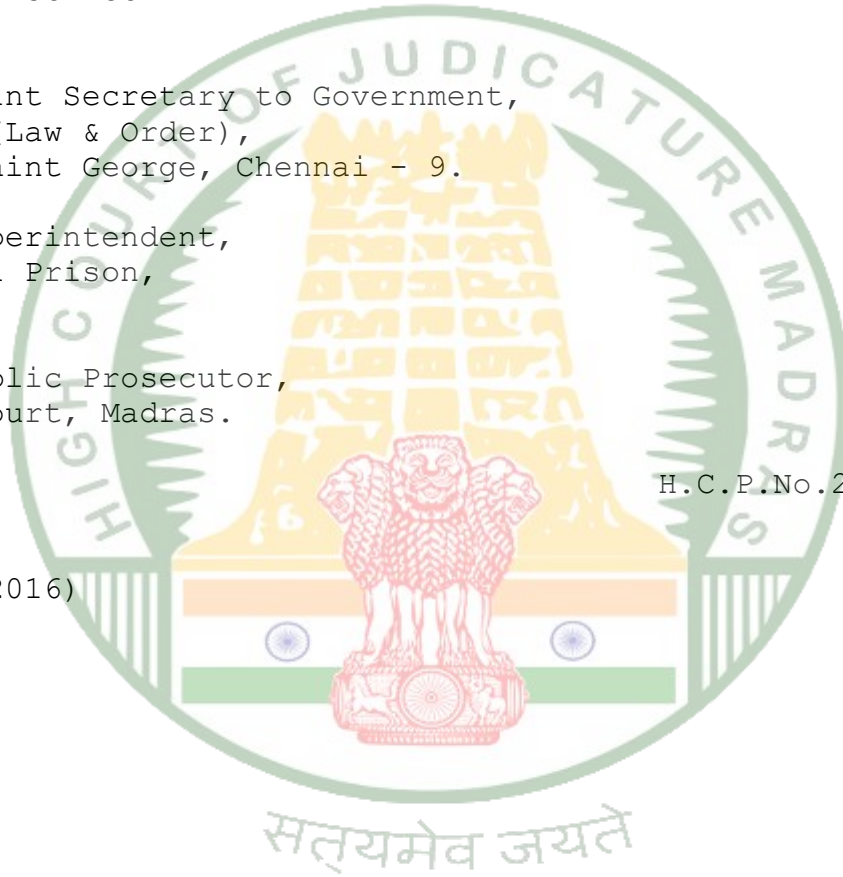
Sub Assistant Registrar

To:

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

H.C.P.No.2585 of 2015

SVI (CO)
CA(23/03/2016)



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