

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR. JUSTICE P.N.PRAKASH

H.C.P.No.2672/2015

Kumar

..Petitioner

Vs.

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

2.The District Collector
& District Magistrate
Kancheepuram District,
Kancheepuram.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 26.05.2015 in BCDFGISSSV No.49/2015 against the petitioner son Santhosh @ Santhosh Kumar, Male aged 24 years S/o. Kumar, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents: Mr.M.Maharaja,APP

ORDER

[Order of the Court was made by P.N.PRAKASH J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in BCDFGISSSV No.49/2015 dated 26.05.2015, whereby the detenu/son of the petitioner, by name, Santhosh @ Santhosh Kumar, son of Kumar, aged 24 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.Though many grounds have been raised in the petition, Mr.D.Balaji, 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 Detaining Authority has stated in the Grounds of Detention the detenu has moved a bail application in the ground case in Cr.No.139/2015 before the learned Sessions Judge No.2, Kancheepuram in C.M.P.No.638/2015 and the same was pending as on the date of passing of the detention order. However, the detenu has been arrested in the second adverse case registered by Kanchi Taluk Police Station in Cr.No.155/2015 and that he has not filed any bail application in the said case. However, the Detaining Authority, by placing reliance on similar cases has arrived at the subjective satisfaction that the detenu will come out on bail in the ground case; but, he has not made any mention about the 2nd adverse case in which the detenu was arrested. This is indicative of non-application of mind on the part of the Detaining Authority and hence, prays for quashment of the detention order.

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 [both in English and Vernacular Version], in particular, paragraph 5, the Detaining Authority has made a mention about the real possibility of the detenu coming out on bail in the ground case (Cr.No.139/2015) by placing reliance on two similar cases. A further perusal of the grounds in particular, paragraph No.1 (Tabular Column showing adverse cases), would disclose that the detenu was arrested in the 2nd adverse case and that he has not filed any bail application. Nowhere in paragraph No.5, the Detaining Authority has mentioned about the 2nd adverse case or cited any similar case to arrive at the subjective satisfaction that there is likelihood of the detenu coming out on bail in the 2nd adverse case. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated, warranting interference of this Court.

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 VII)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
- 2.The District Collector & District Magistrate
Kancheepuram District, Kancheepuram.
- 3.The Public Prosecutor,
High Court, Madras.
4. The Superintendent, Central Prison,
Vellore.
5. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai. 600 009.

H.C.P.No.2672/2015

LRS (CO)

Eu 28.1.16