

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.2676/2015

Rajathi

..

Petitioner

Vs.

1.The Secretary of State,
State of Tamil Nadu,
Prohibition & Excise Department
St George Fort, Chennai 600 009.

2.The Commissioner of Police
Poonamallee High Road, Vepery
Chennai 600 007.

..

Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling upon the production of the records relating to the detention order dated 09.02.2015 made in detention order memo No.112/BCDFGISSSV/2015 passed by the 2nd respondent herein, quash the same and direct the respondents to produce the body or person of the petitioner's son Satheesh, son of Mani, aged about 23 years, branded as Goonda and now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.C.Mohan Raj

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 Memo NO.112/BCDFGISSSV/2015 dated 09.02.2015, whereby the detenu/son of the petitioner, by name, Satheesh, son of Mani, aged 23 years, was branded as a "Goonda" under 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 [Tamilnadu Act 14 of 1982].

2.Though many grounds have been raised in the petition, Mr.C.Mohan Raj, 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 detenu has been remanded to judicial custody in respect of the ground case in Cr.No.179/2015 registered by V3 JJ Nagar Police Station and he has not moved any bail application as on the date of the passing of the detention order. But the Detaining Authority has arrived at the subjective satisfaction by placing reliance on a similar case registered by T1 Ambattur Police Station Cr.No.1960/2012 wherein the accused was granted bail by the court concerned in CrI.MP.No.2392/2012. But in the Booklet, the bail order of the said similar case [in English version] has not been furnished in full and only half of the order has been furnished. This would deprive the detenu of making effective representation to the authorities against the order of detention. Thus, the detention order is vitiated on these grounds 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. सत्यमेव जयते

6.A perusal of the booklet supplied to the detenu, in particular, page No.136, would show that the copy of the bail order of the similar case [in Cr.No.1960/2012] on which much reliance was placed upon by the Detaining Authority to arrive at the subjective satisfaction, has not been furnished properly and that only half of the order has been furnished. This has resulted in the detenu being deprived of making an effective representation. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

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/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

AP

To

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

2.The Commissioner of Police
Chennai City, Poonmallee High Road,
Vepery, Chennai-7.

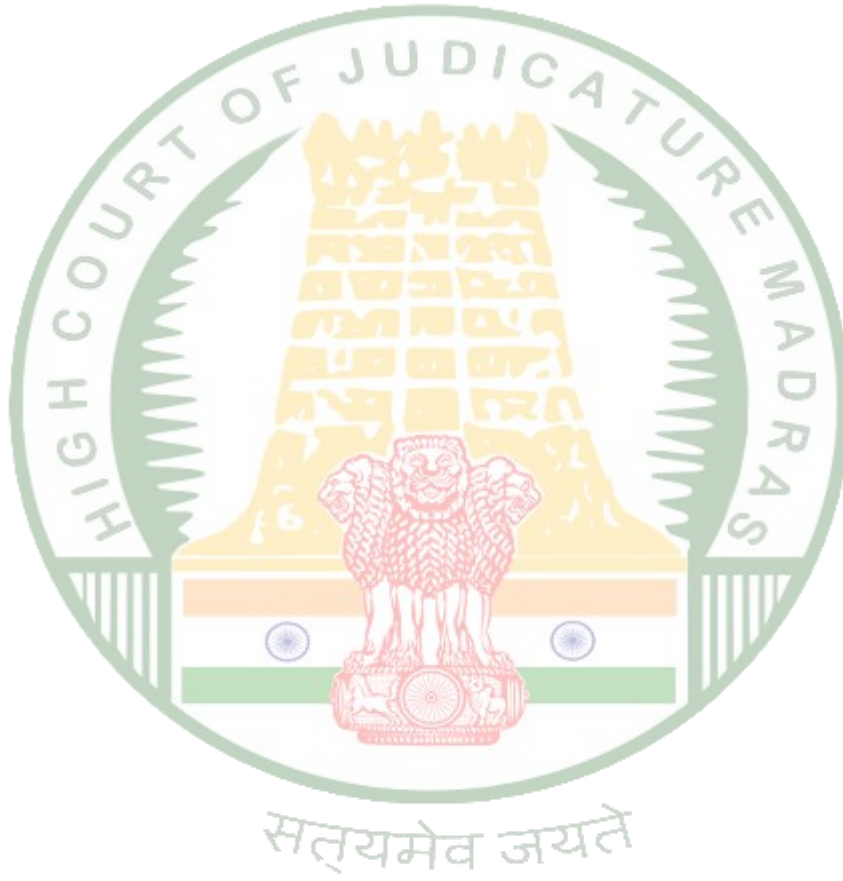
3. The Joint Secretary to Government
Public (Law and order)
Fort Saint George, Chennai-9

4. The Superintendent
Central Prison,
Puzhal, Chennai

5.The Public Prosecutor,
High Court, Madras.

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