

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.2708 of 2015

Sheik Abdullah

... Petitioner

Vs.

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

2.The Commission of Police
Chennai Police
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents herein to produce the petitioner by name Sheik Abdullah S/o Raja Mohamed, Muslim, aged about 24 years before this Court now confined in Central Prison, Puzhal, Chennai set him at liberty and to call for the records pertaining to the order of detention passed by the 2nd respondent in Memo No.466/BCDFGISSSV/2015 dated 19.06.2015 passed by the 2nd respondent and set aside the same.

For petitioner : Mr.T.Muruganantham

For respondents : Mr.M.Maharaja,
Additional Public Prosecutor

O R D E R

[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.466/BCDFGISSSV/2015 dated 19.06.2015, whereby the detenu/the petitioner herein, was ordered to be detained under the provisions of 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 19.06.2015, passed by the second respondent, the detenu came to adverse notice in the following cases:

i) Adverse Cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	V-3 J.J.Nagar PS Cr.No.1717/ 2014	379 IPC
2	T-4 Maduravoyal PS Cr.No.113/2015	461, 380 IPC
3	T-4 Maduravoyal PS Cr.No.342/2015	380 IPC
4	V-3 J.J.Nagar PS Cr.No.410/ 2015	380 IPC
5	V-3 J.J.Nagar PS Cr.No.470/ 2015	379 IPC
6	V-3 J.J.Nagar PS Cr.No.615/ 2015	379 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	V-3 J.J.Nagar PS Cr.No.616/ 2015	341, 294(b), 323, 384, 336 and 506(ii) IPC

3. Though many grounds have been raised in the petition, Mr.T.Muruganantham, 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.

4.Learned counsel appearing for the petitioner submitted that the detenu has been remanded to judicial custody in the adverse cases in Cr.Nos.1717/2014, 410/2015, 470/2015 and 615/2015 registered by the J.J.Nagar Police Station by way of PT Warrant and though a mention has been made by the Detaining Authority in respect of the ground case in paragraph 4 of the Grounds of Detention, the factum of the remand of the detenu in the adverse cases in Cr.Nos.1717/2014, 410/2015, 470/2015 and 615/2015 has not been reflected. This is indicative of the non-application of mind on the part of the Detaining Authority and hence, submitted that the detention order is vitiated 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 and citation.

7.As could be evidenced from the Grounds of Detention, the detenu was arrested by way of P.T.Warrant in the adverse cases in Cr.Nos.1717/2014, 410/2015, 470/2015 and 615/2015 registered by J.J.Nagar Police Station. But the factum of remand of the detenu in the said adverse cases has not been reflected in paragraph 4 of the Grounds of Detention and only a reference with regard to the granting of bail to the detenu in the ground case and the non-furnishing of sureties in the said case as on the date of the passing of the detention order, has been made. When nothing has been stated about the remand of the detenu in the said adverse cases, it is not known whether the detenu has filed any bail applications in the said adverse cases or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse cases. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

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 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.

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

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(CS VI)

//True Copy//

Sub Assistant Registrar

gms

To

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

H.C.P.No.2708 of 2015

AD(CO)
CA(24/02/2016)