

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.2828/2015

K.Lilly

.. Petitioner

Vs

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, direct the respondent to produce the detenu, namely, Kuralarasan, son of Kamaleswaran, aged about 23 years, who was detained in Central Prison at Puzhal, Chennai, as per detention order passed by the 2nd respondent herein in BCDFGISSSV.No.940/2015 dated 17.09.2015 and bungled him as GOONDA before this Court and set him at liberty.

For Petitioner : Mr.M.Murali Vinoth

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

सत्यमेव जयते
ORDER

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

This Habeas Corpus Petition is filed, by the mother of the detenu, namely, Kuralarasan, son of Kamaleswaran, aged about 23 years, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in BCDFGISSSV.No.940/2015, dated 17.09.2015, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) 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 14/1982), the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", in the

Central Prison, Puzhal, Chennai, and to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. As per the grounds of detention dated 17.09.2015, 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.6 Kolathur Police Station Cr.No.304 of 2010	120-b, 147, 148, 341, 506 (ii) IPC @ 302 read with 149 IPC
2	V.6 Kolathur Police Station Cr.No.938 of 2015	384 and 506 (ii) IPC
3	V1 Villivakkam Police Station Crime No.796 of 2015	341, 384 and 506 (ii) IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	V.4 Rajamangalam Police Station Crime No.648 of 2015	341, 294[b], 323, 336, 397 & 506[ii] IPC

3. Though many grounds have been raised in this Habeas Corpus Petition, Mr.M.Murali Vinoth, the learned counsel appearing for the petitioner, would focus his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel appearing for the petitioner submitted that the detenu has been remanded to judicial custody in the 2nd adverse case in V6 Kolathur Police Station Crime No.938 of 2015 and the 3rd adverse case in V.1 Villivakkam Police Station Crime No.796 of 2015 by way of PT Warrant, but the said factum of the remand of the detenu in the said adverse cases, has not been mentioned in the grounds of detention, more particularly, in paragraph 4 of the Detention order. This shows the non-application of mind, on the part of the Detaining Authority and hence, the detention order is liable to be set aside.

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 Booklet furnished before us, the detenu was arrested by way of P.T.Warrant in the 2nd adverse case in V6 Kolathur Police Station Crime No.938 of 2015 and the 3rd adverse case in V.1 Villivakkam Police Station Crime No.796 of 2015. The Remand Reports to that effect have also been furnished in the Booklet. But the said factum of remand of the detenu in the said adverse cases have not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the ground case. 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 application 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 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.

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, dated 17.09.2015, 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/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

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

2.The Commissioner of Police,
Chennai Police

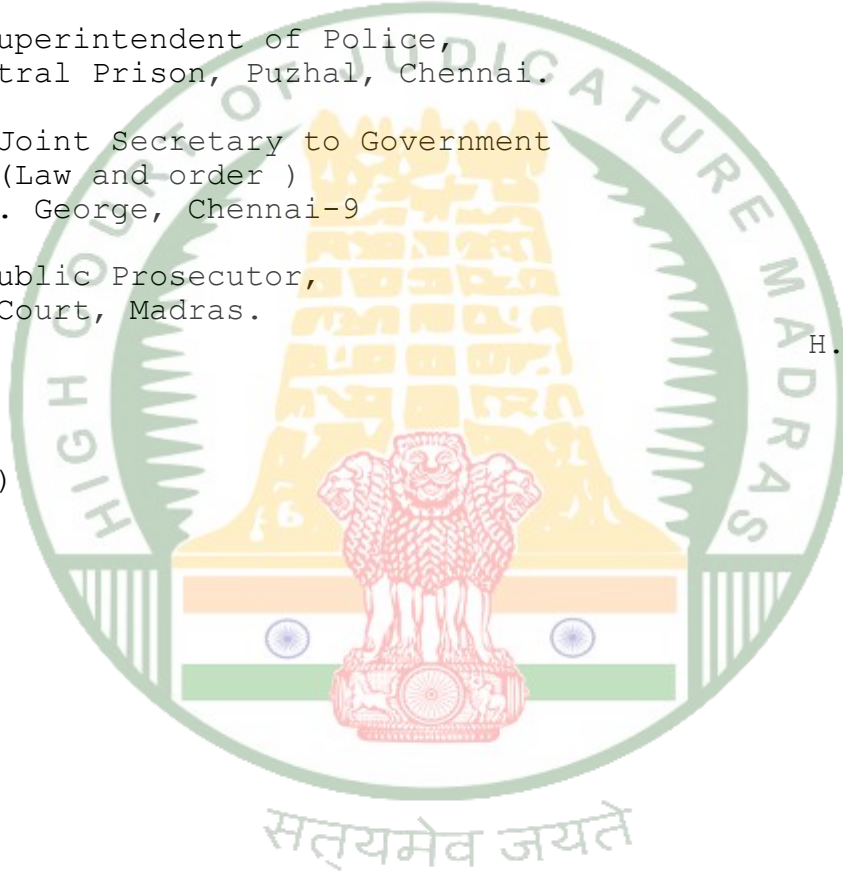
3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2828/2015

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