

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM

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

H.C.P.No.2864/2015

C.Babu

.. Petitioner

Vs

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

2.The District Collector and
District Magistrate of
Dharmapuri District, Dharmapuri.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the records on the file of the 2nd respondent in Detention Order S.C.No.36/2015 dated 15.09.2015 and direct the respondents to produce the detenu, namely, Pasupathi, male, aged abut 24 years, son of C.Babu, now kept in Central Prison, Salem before this Court and quash or set aside the same and set him at liberty.

For Petitioner : Mr.U.M.Ravichandran
for M/s.Durai Gunasekaran

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

ORDER

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

This Habeas Corpus Petition is filed, by the father of the detenu, namely, Pasupathy, son of Babu, aged about 24 years, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in S.C. No.36/2015, dated 15.09.2015, 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, Salem, 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 15.09.2015, 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	Harur Police Station Cr.No.228 of 2015	379 IPC
2	Harur Police Station Cr.No.362 of 2015	147, 148, 341, 324, 294-b and 323 of IPC
3	Harur Police Station Crime No.556 of 2015	147, 148, 341, 324, 294-b and 323 of IPC
4	Harur Police Station Crime No.557/2015	379 of IPC
5	Harur Police Station Crime No.559/2015	379 of IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Pappireddipatty Police Station Crime No.401/2015	392 IPC

3. Though many grounds have been raised in this Habeas Corpus Petition, Mr.K.M.Ravichandran, 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 ground case in Pappireddipatty Police Station Cr.No.401 of 2015 under Section 392 of IPC and in the 1st adverse case in Harur Police Station Crime No.228 of 2015 under Section 379 of IPC and in the 2nd adverse case in Harur Police Station Crime No.362/2015 under Sections 147, 148, 341, 324, 294-b and 323 IPC, subsequent to his arrest, he has been already released on bail. But so far as the 3rd, 4th and 5th adverse cases in Harur Police Station Cr.Nos.556, 557 and 559 of 2015 are concerned, 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 in the ground case in Pappireddipatty Police Station Cr.No.401 of 2015 under Section 392 of IPC, the petitioner has been remanded to judicial custody on 30.08.2015 and the bail application moved by him in Cr.M.P.No.4483 of 2015 on 01.09.2015 was pending and in the 1st adverse case in Harur Police Station Crime No.228 of 2015 under Section 379 of IPC and the 2nd adverse case in Harur Police Station Crime No.362/2015 under Sections 147, 148, 341, 324, 294-b and 323 IPC, he has already been released on bail, before his arrest in the ground case. The Remand Reports to that effect have also been furnished in the Booklet. But the remand of the detenu in the 3rd, 4th and 5th adverse cases, namely, Harur Police Station Cr.Nos.556, 557 and 559 of 2015, have not been reflected in paragraph 4 of the Grounds of Detention and no reference has been made in respect of the said cases. 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 15.09.2015, 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/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant 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 District Collector and District Magistrate of
Dharmapuri District, Dharmapuri.
3. The Superintendent of Police,
Central Prison, Salem.
4. The Additional Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai. 600 009.

H.C.P.No.2864/2015

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