

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.2919 of 2015

Sabari @ Pulianthoppu Arupu Appu ... Petitioner

Vs.

1.Commissioner of Police
Greater Chennai Police
Egmore, Chennai 600 008.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records in BCDFGISSSV Memo No.1070 of 2015 dated 30.09.2015 on the file of the respondent - 1, Commissioner of Police, Greater Chennai Police, and to issue writ, order or direction in the nature of Habeas Corpus quashing the detention passed in the abovesaid memo and to set at liberty the petitioner viz. Sabari @ Pulianthoppu Aruppu Appu male aged about 26 years S/o Nagaraj, residing at 13, 7th street, PULianthope, Chennai 600 012 now lodged at Central Prison, Puzhal, Chennai 600 066.

For petitioner : Mr.S.Tamil Maran

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

O R D E R

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

Challenge is made to the order of detention passed by the first respondent vide Proceedings in BCDFGISSSV Memo No.1070 of 2015 dated 30.09.2015, 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 30.09.2015, passed by the first 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	Nolambur PS Cr.No.487/2015	454, 380 IPC
2	Pulianthope PS Cr.No.825/2015	341, 294(b), 384, 506(ii) IPC
3	Nolambur PS Cr.No.563/2015	341, 392, 506(ii) IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Nolambur PS Cr.No.569/2015	341, 294(b), 323, 392, 336, 427 and 506(ii) r/w 397 IPC

3. Though many grounds have been raised in the petition, Mr.S.Tamil Maran, 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.487/2015, 825/2015 and 563/2015 registered by the Nolambur Police Station, Pulianthope Police Station and Nolambur Police Station respectively 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 case in Cr.No.825/2015 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.487/2015, 825/2015 and 563/2015. But the factum of remand of the detenu in the second adverse case in Cr.No.825/2015 has not been reflected in paragraph 4 of the Grounds of Detention. When nothing has been stated about the remand of the detenu in the said adverse case, it is not known whether the detenu has filed any bail application in the said adverse case or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse case. 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 first 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 III)

//True Copy//

Sub Assistant Registrar

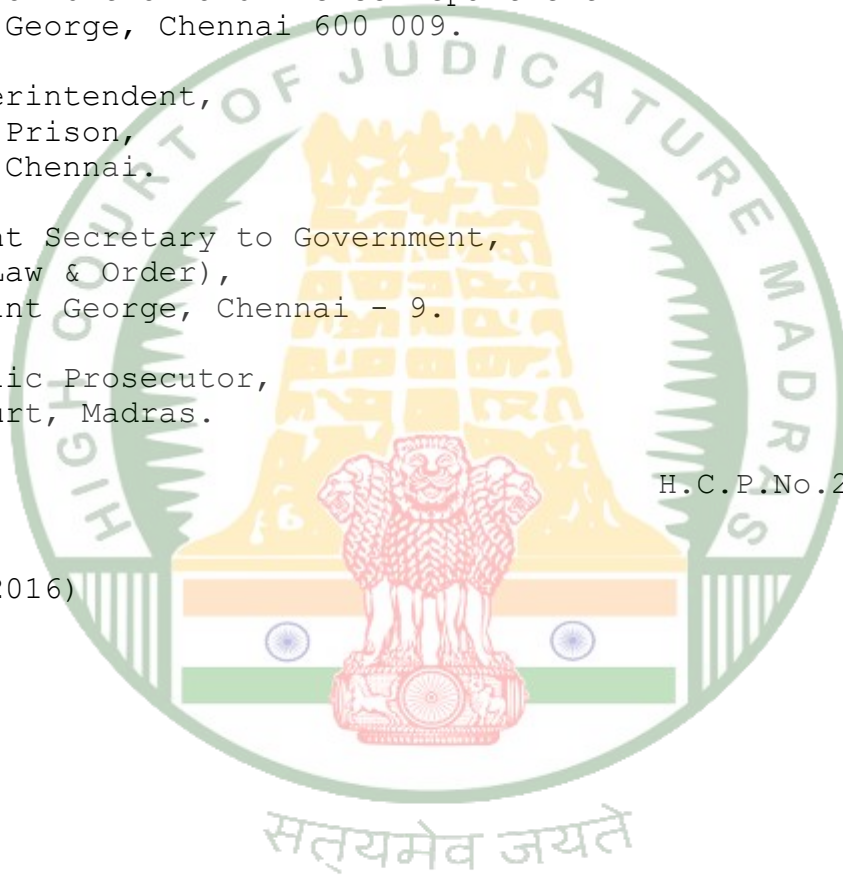
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To

- 1.The Commissioner of Police
Greater Chennai Police
Egmore, Chennai 600 008.
- 2.The Secretary to Government
Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009.
- 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.2919 of 2015

LRS (CO)
CA(25/05/2016)



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