

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2016

CORAM:

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

H.C.P.No.2948 of 2015

H.Jaheer Hussain

... Petitioner

-Vs-

1.State of Tamil Nadu  
Rep. by its Secretary to Govt.,  
Prohibition and Excise Department  
Fort St.George  
Chennai 600 009.

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

3.The Inspector of Police  
Law and Order  
C1 Flower Bazaar Police Station  
Chennai 600 001.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order of detention passed by the 2nd respondent vide in Memo No.794/BCDFGISSSV/2015 dated 26.08.2015 and set aside the same and consequently direct the respondent to produce the petitioner namely H.Jaheer Hussain, S/o Hajibai, Muslim, aged about 32 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.C.Samivel

For Respondents : Mr.A.N.Thambidurai  
Additional Public Prosecutor

O R D E R

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

This Habeas Corpus Petition has been filed by the detenu, namely, Jaheer Hussain, S/o Hajibai, aged about 32 years to issue a Writ of Habeas Corpus, calling for the records relating to the impugned order passed by the 2<sup>nd</sup> respondent in Memo No.794/BCDFGISSSV/2015 dated 26.08.2015, detaining him under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), branding him as a "Goonda" as contemplated u/s 2 (f) of the Tamil Nadu Act 14 of 1982, and to quash the same, produce him before this Court and to set him at liberty.

2. Though many grounds have been raised in the petition, Mr.C.Samivel, 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. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.962/2015 and in the 3rd and 4th adverse cases in Cr.Nos.61 and 62 of 2015. He has filed bail application in the ground case in Cr.No.962/2015 and the same is pending as on the date of the passing of the detention order. The detenu has not moved any bail application for the 3rd and 4th adverse cases, in which he is in remand. He would also contend that the detaining authority has placed reliance on the statement of the sponsoring authority to the effect that the relatives of the detenu are taking steps to take him out on bail by filing bail applications in the adverse cases in Cr.Nos.61 and 62 of 2015. Further, the Detaining Authority has arrived at the subjective satisfaction that there is very likely of the detenu coming out on bail in the ground case by relying upon the similar case registered by H.6 RK Nagar Police Station Cr.No.288/2014 for the offences u/s 341, 294(b), 323, 324, 307, 336 and 506(ii) IPC, wherein bail was granted to an accused by the learned Principal Sessions Judge, Chennai in CrI.M.P.No.6051/2014. The learned counsel would add that admittedly, in this case, the bail application filed by the detenu in the ground case is pending and he has not moved any bail applications in the 3rd and 4th adverse cases and he is in remand in both the cases. When a bail application is pending, there is no presumption that the detenu would be granted bail and when no bail application is filed, there is no real possibility of the detenu coming out on bail. No cogent

materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case. The particulars of the similar case referred to and relied upon by the detaining authority where bail is granted, is not of the same offences so as to compare that case with that of the detenu. With regard to the 3rd and 4th adverse cases it is stated that relatives are taking steps to file bail application. Therefore, there is no imminent possibility of the detenu coming out on bail on the basis of the bail granted in the similar case. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail is a mere ipse dixit without any cogent materials.

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 and citation.

6. As could be seen from the above ground in the order of detention, the detenu is in remand in the 3rd and 4th adverse cases and in the ground case and the detenu has not filed any bail application in the 3rd and 4th adverse cases and the bail application filed by him in the ground case was pending as on the date of passing of the detention order. Merely stating that steps have been taken on behalf of the detenu by the relatives of the detenu to file bail applications in the adverse cases is not sufficient to pass an order of detention. Except recording a statement that the relatives of the detenu are taking steps to file bail applications, no other materials are shown as to the steps taken to file bail application in the adverse case. When a bail application is pending, there is no presumption that the detenu would come out on bail and when no bail application is filed, there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is every likelihood of his coming out on bail in the ground case and that there is a real possibility of the detenu coming out on bail in the 3rd and 4th adverse cases by filing bail applications, would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority.

7.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.

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

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order dated 26.08.2015 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 VI)

//True Copy//

Sub Assistant Registrar

gms

To

1.State of Tamil Nadu  
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Prohibition and Excise Department  
Fort St.George  
Chennai 600 009.

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

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C1 Flower Bazaar Police Station  
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4.The Superintendent,  
Central Prison,  
Puzhal, Chennai.

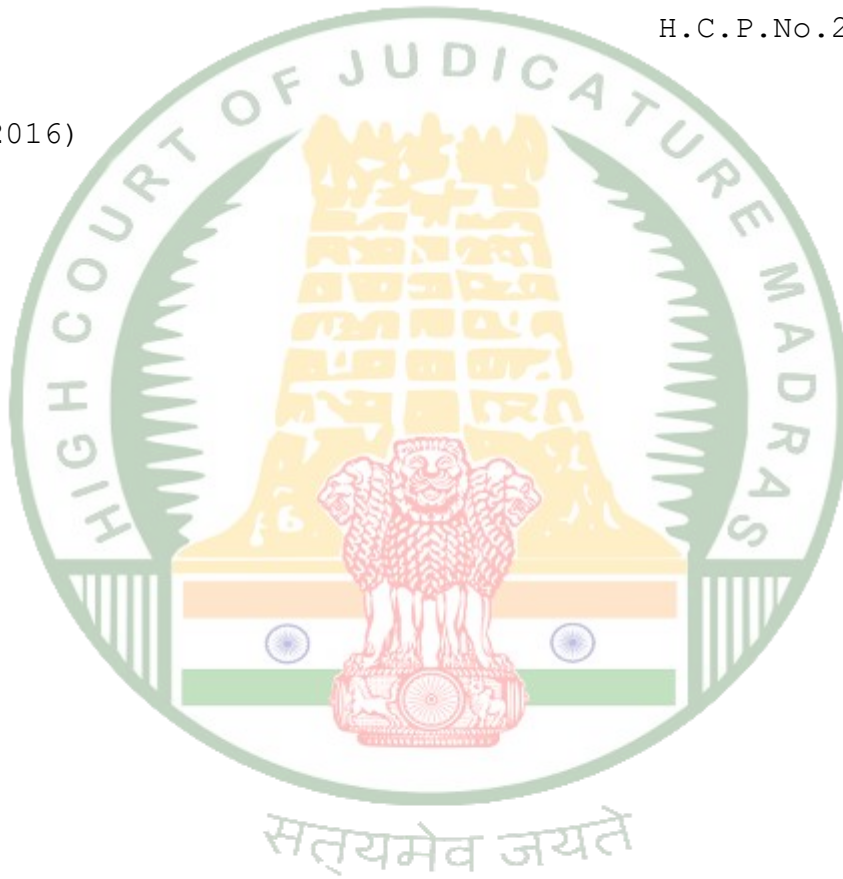
5.The Joint Secretary to Government,  
Public(Law & Order),  
Fort Saint George, Chennai - 9.

6.The Public Prosecutor,  
Madras High Court,  
Chennai.

+1cc to Mr.C.Samivel, Advocate, S.R.No.22895

H.C.P.No.2948 of 2015

LRS (CO)  
CA(30/05/2016)



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