

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2016

CORAM

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

H.C.P.No.3081/2015

Kumar

..... Petitioner

Vs

1.The State of Tamil Nadu,
rep.by its Secretary to Government (Home)
Prohibition & Excise Department,
Secretariat, Chennai-9

2.The District Magistrate and District Collector,
Salem District, Salem. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling for the records in C.M.P.No.50/GOONDA/C2/2015, dated 24.11.2015, on the file of the 2nd respondent herein and quash the same as illegal and consequently, direct the respondents to produce the detenu Dinesh @ Ganesh, son of Kumar, aged about 23 years, who is now confined in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.J.Ramakrishnan

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

सत्यमेव जयते
ORDER

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

This Habeas Corpus Petition has been filed, by the father of the detenu, namely, Dinesh @ Ganesh, aged about 23 years, son of Kumar, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.50/GOONDA/C2/2015, dated 24.11.2015, 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 to set him at liberty, forthwith.

2.Though, many grounds have been raised in the petition, Mr.J.Ramakrishnan, 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.Learned counsel appearing for the petitioner submitted that the detenu has been remanded in the ground case in Cr.No.578/2015 registered by Mettur Police Station and the bail application filed by him for the above said case in CMP.No.3319/2015 on the file of the learned Principal Sessions Judge, Salem, was dismissed, on 14.10.2015 and the further bail application filed before this Court in CrI.OP.No.26237/2015 was also dismissed, on 20.11.2015. But the Detaining Authority, in the Grounds of Detention, has relied upon that the said CrI.O.P.No.26237 of 2015 is pending before this Court. It is submitted that when reliance is placed on a similar case by the Detaining Authority to arrive at the subjective satisfaction, he has to place reliance only on such case, in which bails are granted by a Court similar to that of the Court/Courts where the bail applications of the detenu are pending and not the order of a Court below. This is indicative of non-application of mind on the part of the Detaining Authority and thus, the detention order is vitiated on the above sole ground and the same is liable to be quashed.

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.

6.As evidenced from the Grounds of Detention, in particular, paragraph 4, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case [in which case bail application was already dismissed by this Court in CrI.OP.No.26237/2015 subsequent to the dismissal of the earlier bail applications by the Court below], by placing reliance on the bail granted to the accused in CMP.No.3749/2011 in a similar case registered at Salem Town Police Station Cr.No.1792 of 2011 by the learned Principal Sessions Judge, Salem. Whenever a bail application in

connection with any adverse case or ground case is pending before a High Court and if the Detaining Authority arrives at the subjective satisfaction that the detenu would be granted bail in the said cases by placing reliance upon an order passed in a similar case, such order should be one passed by the High Court itself and not the order of the Court below, as has been done in the instant case. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone.

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 ground.

9. 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 V)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government (Home)
Prohibition & Excise Department,
Secretariat, Chennai-9

2.The Commissioner of Police,
Salem.

3.The Superintendent of Police,
Central Prison, Salem.

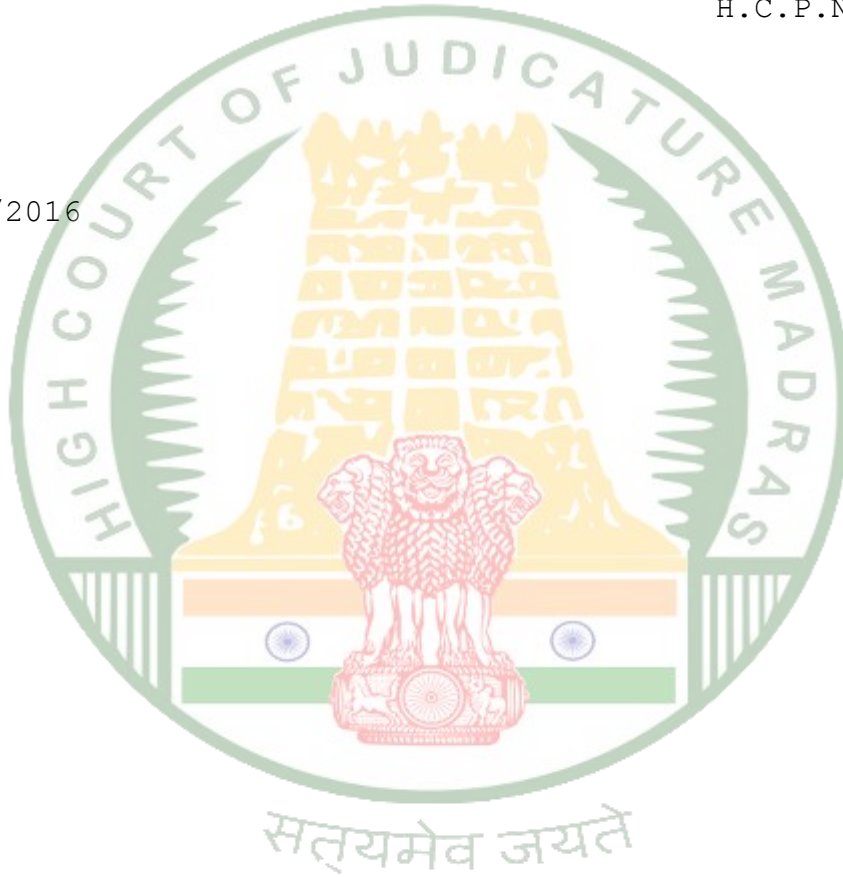
4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J.Ramakrishnan, Advocate sr.26068

H.C.P.No.3081/2015

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srg 24/05/2016



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