

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.3138/2015

Venkateswara Rao

..

Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai Police,
Vepery, Chennai 600007.

..

Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the detention made in Memo No.1148/BCDFGISSSV/2015 dated 31.10.2015 passed by the Commissioner of Police, Greater Chennai Police, Vepery, Chennai-7 the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu Thirumathi Annasakthi Lakshmi, wife of Sampasiva Rao, aged 47 years, now confined in Special Prison for Women, Puzhal, Chennai, at liberty.

For Petitioner : Mr.R.Balakrishnan

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

ORDER

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

Challenge is made to the order of detention, passed by the second respondent, vide Proceedings in Memo No.1148/BCDFGISSSV/2015 dated 31.10.2015, whereby the detenu/cousin sister of the petitioner herein, was ordered to be detained under the provisions 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 of 1982) branding her as a "Goonda".

2 Though many grounds have been raised in the petition, Mr.R.Balakrishnan, the learned counsel appearing on behalf of the petitioner, confines his argument only in respect of the 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 bail applications, filed by the detenu in the 1st, 2nd and 3rd adverse cases in Cr.Nos.349/2015; 1657/2015 and 2326/2015, on the file of R4 Soundarapandiyanar Angadi Police Station, in CrI.MP.Nos.1254/2015, 1252/2015 and 1253/2015, were dismissed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai, and the further bail applications moved by him in the said cases before the learned Principal Sessions Judge, Chennai, in CrI.MP.Nos.17061/2015, 17062/2015 and 17063/2015, were dismissed on 13.10.2015 and he has not moved any further bail applications in the said cases as on the date of passing of the detention order. Further, he was granted bail in the ground case [Cr.No.2370/2015] and in the 4th adverse case [Cr.No.2363/2015] by the learned Principal Sessions Judge, Chennai in CrI.MP.Nos.16216/2015 and 16215/2015 ; but he has not furnished the sureties. But the Detaining Authority, in the Grounds of Detention, has stated that the relatives are taking steps to file bail applications in the said adverse cases No.1 to 3. But, the said factum has not been reflected in the Special Report of the Sponsoring Authority. 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 stated that the "Sponsoring Authority has stated that Tmt.Annasakthi's relatives are taking action to her her out on bail in R4 Soundarapandiyanar Angadi Police Station Cr.Nos.349/2015, 1657/2015 and 2326/2015 by filing another bail applications before the appropriate Court...". But, a perusal of the

Booklet, in particular, the Special Report of the Sponsoring Authority, it is evident that nothing has been stated by the Sponsoring Authority to the effect of the relatives taking steps to file bail applications in the said cases and no statements of the relatives have been recorded to that effect. 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 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 II)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Greater Chennai Police,
Vepery, Chennai 600007.

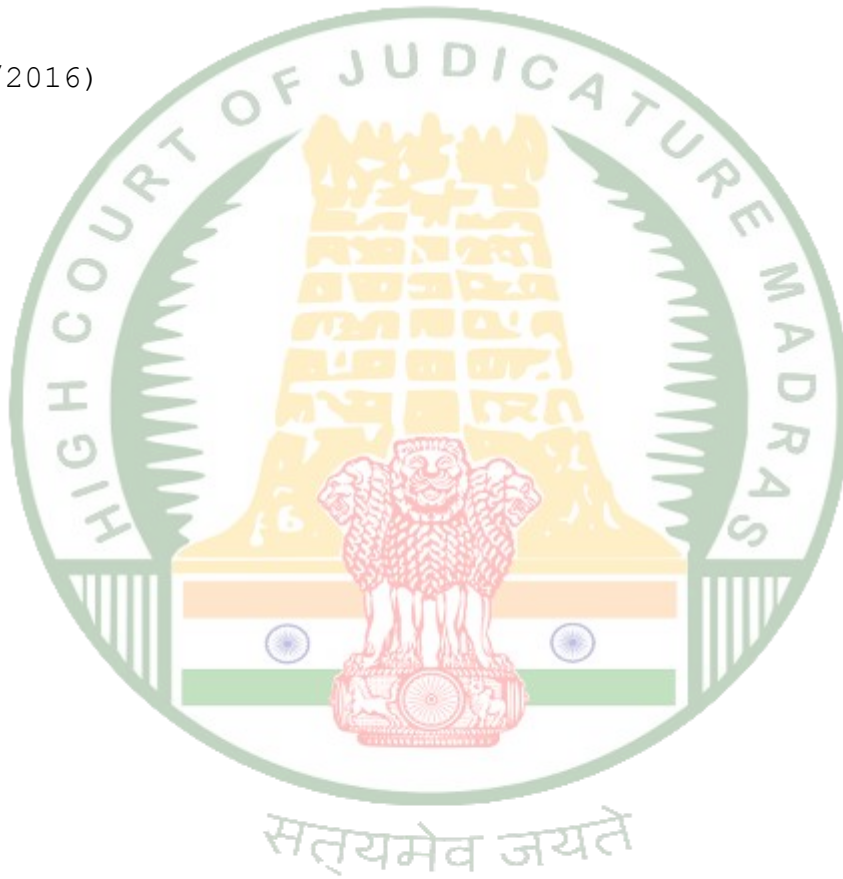
3.The Superintendent,
Central Prison,
Special Prison for Women,
Puzhal, Chennai.

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.3138/2015

pvs (CO)
srg (05/05/2016)



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