

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.3178/2015

Y.Suvitha

.. 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, Namakkal District,
Namakkal.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records of the detention order made in C.M.P.No.73/Goonda/2015/M1, dated 02.12.2015 by the District Collector and District Magistrate, Namakkal District, Namakkal, the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu Yuvaraj, son of Subramani, aged about 35 years and now confined at Central Prison, Vellore.

For Petitioner : Mr.M.Elango

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 wife of the detenu, namely, Yuvaraj, son of Subramani, aged about 32 years, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.73/Goonda/2015/M1, dated 02.12.2015, 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, Vellore, 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 02.12.2015, 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	V.6 Velladu Police Station Cr.No.87 of 2013	387 IPC
2	Perundurai Police Station Cr.No.303 of 2013	342 and 364 of IPC
3	Perundurai Police Station Cr.No.645/2013	364-A IPC
4	Komarapalayam Police Station Cr.No.390/2014	143, 341, 188 IPC read with 7(1) (a) Criminal Law Act 1932
5	Komarapalayam Police Station Cr.No.400/2014	143, 379 IPC and Section 4 of TamilNadu Property (Prevention of damage and loss) Act, 1992
6	Sankagiri Police Station Cr.No.106/2015	147, 148, 294-b, 323, 324 and 506(ii) IPC
7	Karur Town Police Station Cr.No.120/2015	147, 427, 294-b and 506(i) IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Tiruchengode Town Police Station Cr.No.289 of 2015 and altered as Cr.No.90 of 2015 and subsequently transferred to CBCID, Namakkal in Cr.No.2 of 2015	363, 302, 212, 216 IPC read with Section 3(2) (v) of SC/ST (Prevention of Atrocities) Act, 1989.

3. Though many grounds have been raised in this Habeas Corpus Petition, Mr.M.Elango, 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 5th adverse case in Komarapalayam Police Station Cr.No.400 of 2014 under Sections 143, 379 of IPC and Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, by way of PT Warrant, but the said factum of the remand of the detenu in the said adverse case, 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 detenu was arrested by way of P.T. Warrant in the 5th adverse case in Komarapalayam Police Station Cr.No.400 of 2014 under Sections 143, 379 of IPC and Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The Remand Report to that effect has also been furnished in the Booklet. But the said factum of remand of the detenu in the said 5th adverse case has not been reflected in paragraph 4 of the Grounds of Detention and only a reference has been made in respect of the ground case. 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 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 02.12.2015, 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-cum-District
Magistrate, Namakkal District, Namakkal.
 - 3.The Superintendent of Police,
Central Prison, Vellore.
 - 4.The Additional Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr.M. Elango, Advocate Sr.26061

EV(CO)
EU(11/05/2016)

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