

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2016

CORAM:

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

H.C.P.No.3206 of 2015

Madhu

... Petitioner

-Vs-

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

2.The Commissioner of Police
Salem City Police
Commissioner Office
Salem City.

... 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 in CMP No.66/Goonda/Salem City/2015 dated 24.08.2015 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Venkatesh, S/o Madu aged about 29 years, now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.A.Ramesh

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 father of the detenu, namely, Venkatesh, S/o Madhu, aged about 29 years to issue a Writ of Habeas Corpus, calling for the records relating to the impugned order passed by the 2nd respondent in C.M.P.No.66/Goonda/Salem City/2015 dated 24.08.2015, 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. A. Ramesh, 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.830/2015 and in the 2nd adverse case in Cr.No.679/2015. He has not moved any bail application in the ground case and in the 2nd adverse case, 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 application in the ground case and in the 2nd adverse case. The learned counsel would add that admittedly, he has not moved any bail application in the ground case and in the 2nd adverse case 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 and in the 2nd adverse 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 ground case and in the

2nd adverse case and he has not filed any bail application in both the cases 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 ground case and in the 2nd adverse case 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 ground case and in the 2nd 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 real possibility of the detenu coming out on bail in the ground case and in the 2nd adverse case 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 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

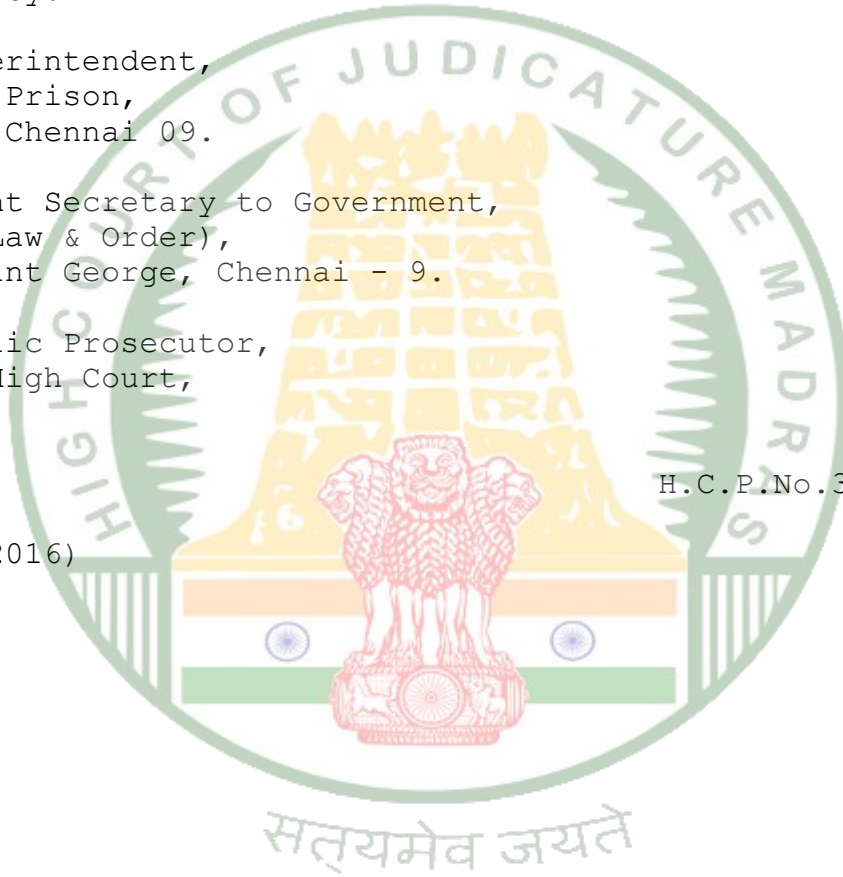
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To

- 1.The Secretary to Govt.,
Department of Prohibition and Excise (Home)
Fort St.George
Chennai 600 009.
- 2.The Commissioner of Police
Salem City Police
Commissioner Office
Salem City.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai 09.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
Madras High Court,
Chennai.

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

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