

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.3219/2015

Raja @ Muthupandi

.. Petitioner

Vs.

1.The District Magistrate & District Collector
Thiruppur District, Thiruppur.

2.The Principal Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai-9.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the respondents herein to produce the body of the petitioner/detenu Raja @ Muthupandi, son of Jayaraj Thevar, aged 28 years before this Court and call for the records pertaining to the detention order passed in Cr.MP.No.08/Goonda/2015 dated 31.03.2015 on the file and passed by the 1st respondent herein and set aside the same and set the petitioner/detenu at liberty forthwith who is now detained in Central Prison, Coimbatore.

For petitioner : Mr.K.Ethirajalu

For respondents : Mr.M.Maharaja, APP

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

Challenge is made to the order of detention passed by the first respondent vide Proceedings in Cr.MP.No.08/Goonda/2015 dated 31.03.2015, whereby the detenu/the petitioner herein, was ordered to be detained under the provisions of 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 him as a "GOONDA".

2. As per the grounds of detention dated 31.03.2015, passed by the first 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	Moolanur PS Cr.No.232/2014	454, 380 IPC
2	Moolanur PS Cr.No.234/2014	454, 380 IPC
3	Alangiyam PS Cr.No.249/2014	454, 380 IPC M.O.II [L] III [J]

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Alangiyam PS Cr.No.286/2014	392 r/w 397 IPC

3. Though many grounds have been raised in the petition, Mr.K.Ethirajalu, 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.

4. Learned counsel appearing for the petitioner submitted that the detenu has been remanded to judicial custody in the adverse cases in Cr.Nos.232/2014, 234/2014 and 249/2014 registered by the Moolanur Police Station and Alangiyam Police Station respectively by way of PT Warrant and though a mention has been made by the Detaining Authority in respect of the ground case in paragraph 5 of the Grounds of Detention, the factum of the remand of the detenu in the adverse cases in Cr.Nos. 232/2014, 234/2014 and 249/2014 has not been reflected. This is indicative of the non-application of mind on the part of the Detaining Authority and hence, submitted that the detention order is vitiated and the same is liable to be quashed.

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 Grounds of Detention, the detenu was arrested by way of P.T.Warrant in the adverse cases in Cr.Nos. 232/2014, 234/2014 and 249/2014 registered by Moolanur

Police Station and Alangiyam Police Station respectively. But the factum of remand of the detenu in the said adverse cases has not been reflected in paragraph 5 of the Grounds of Detention and only a reference with regard to the granting of bail to the detenu in the ground case and the non-furnishing of sureties in the said case as on the date of the passing of the detention order, has been made. When nothing has been stated about the remand of the detenu in the said adverse cases, it is not known whether the detenu has filed any bail applications in the said adverse cases or not. If that be so, there is no imminent possibility of the detenu coming out on bail in the said adverse cases. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

8.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.

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 passed by the first 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

/ True Copy /

सत्यमेव जयते

Sub Assistant Registrar

AP

To

1.The District Magistrate & District Collector
Thiruppur District, Thiruppur.

2.The Principal Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai-9.

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison, Coimbatore

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

+ one cc to Mr.K.Ethirajulu, Advocate SR.4077

H.C.P.No.3219/2015

MSM(CO)
VS 09.02.2016



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