

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2016

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

H.C.P.No.105 of 2016

S.Nirmala

.. Petitioner

vs.

1. State rep.by Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2. The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records in No.BCDFGISSSV No.1 /2016 passed by the second respondent on 05.01.2016 set aside the same and direct the respondents to produce SENTHIL son of Dhanapal, aged 36 years, who is now detained in Central Prison, Vellore - 2 before this Court and set him at liberty.

For Petitioner : Mr. S.Swamidoss Manokaran

For Respondents : Mr.M.Maharaja
Addl. Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in B.C.D.F.G.I.S.S.V. No.01/2016 dated 05.01.2016, whereby the detenu, namely Senthil, S/o.Dhanapal, aged about 36 years, was ordered to be detained under the provisions of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand

Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. Though many grounds have been raised in the petition, Mr.S.Swamidoss Manokaran, 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 to judicial custody in the ground case in Cr.No.1364 of 2015 as well as in the third adverse case in Cr.No.1362/2015 registered by the Vishnu Kanchi Police Station 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 third adverse case in Cr.No.1362/2015 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.

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 evidenced from the Grounds of Detention, the detenu was arrested in the ground case in Cr.No.1364 of 2015 as well as in the third adverse case in Cr.Nos.1362/2015, but the factum of remand of the detenu in the third adverse case has not been reflected in paragraph 5 of the Grounds of Detention. 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.

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.
gms

s/d-

Assistant Registrar(CS-VI) /
Vacation Officer.

True Copy

Sub-Assistant Registrar

To

1. State rep.by Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
2. The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram
- 3.The Superintendent
Central Prison, Vellore.
4. The Joint Secretary to Govt.
Public (Law and Order) dept.
Fort St.George, Chennai 9.
5. The Public Prosecutor,
High Court, Madras.

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prk30/5

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