

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.25 of 2016

Usha .. Petitioner/Brother in Law
Vs.

1.Government of Tamil Nadu, rep.by its
Principal Secretary, Home, Prohibition
and Excise (XVI) Department
Fort St.George, Chennai 600 009.

2.District Magistrate and District Collector
Dharmapuri. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records in S.c.No.41/2015 dated 18.11.2015 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of the petitioner's brother-in-law, Thiruppathy, S/o Mahendiran, aged 25 years, now confined in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Ms.R.Subhadra Devi
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 S.C.No.41/2015 dated 18.11.2015, whereby the detenu by name, Thiruppathy, Son of Mahendiran, aged about 25 years, 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 him as a "Goonda".

2.Though many grounds have been raised in the petition, Ms.R.Subhadra Devi, the learned counsel appearing for the petitioner, confines her 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 in the ground case in Cr.No.438/2015 registered by Palacode Police Station and the bail application filed by him for the above said case in Crl.MP.No.8392/2015 on the file of the learned Judicial Magistrate, Palacode was pending as on the date of passing of the detention order. But the Detaining Authority, in the Grounds of Detention, has relied upon the bail being granted to an accused in similar case by the learned District Principal Sessions Judge, Dharmapuri in Crl.MP.No.1463/2015. It is submitted that when reliance is placed on a similar case by the Detaining Authority to arrive at the subjective satisfaction, he has to place reliance only on such case, in which bail is granted by a Court similar to that of the Court/Courts where the bail applications of the detenu are pending and not the order of a Court below or a Superior Court. 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 arrived at the subjective satisfaction that the detenu would be granted bail in the ground case, by placing reliance on the bail granted to the accused in Crl.MP.No.1463/2015 by the learned District Principal Sessions Judge, Dharmapuri. Whenever a bail application in connection with any adverse case or ground case is pending and if the Detaining Authority arrives at the subjective satisfaction that the detenu would be granted bail in the said cases by placing reliance upon an order passed in a similar case, such order should be one granted by a Court similar to that of the Court/Courts where the bail applications of the detenu are pending. 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 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 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-V)

//True Copy//

Sub Assistant Registrar

gms

To

1.Government of Tamil Nadu, rep.by its
Principal Secretary, Home, Prohibition
and Excise (XVI) Department
Fort St.George, Chennai 600 009.

2.District Magistrate and District Collector
Dharmapuri.

3.The Superintendant, Central Prison, Salem.

4.The Joint Secretary, Public (Law & Order),
Fort St.George, Chennai 9.

5. The Additional Public Prosecutor
High Court, Madras.

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