

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2016

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THE HON'BLE MR.JUSTICE G.CHOCKALINGAM
and
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No.255 of 2016

Raja

..Petitioner

Vs.

1. The State of Tamil Nadu
Rep.by its Secretary to Government
Prohibition and Excise Department (Home)
Secretariat, Chennai - 600 009.

2. The Commissioner of Police
Veppery, Greater Chennai

..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 detenu's detention order passed by the second respondent in Memo No.1270/BDFGISSV/2015 dated 22/12/2015 and set aside the same and produce the detenu Yuvaraj, Male, aged 26, son of Raja now detained in Central Prison -II Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Mohammed Aasif

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

O R D E R

[Order of the Court was made by G.CHOCKALINGAM, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings No.1270 of 2015 dated 22.12.2015, whereby the detenu/son of the petitioner, by name, Yuvaraj S/o Raja, aged 26 years, was ordered to be detained under the provisions of the 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 her as a "Bootlegger".

2. Though many grounds have been raised in the petition, Mr. Mohammed Aasif, 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 adverse cases in Cr.Nos.619/2015, 552/2015, 596/15, 685/2015, 425/2015, 426/2015, 518/2015, 592/2015 as well as in the ground case in Cr.No.598/15 and though a mention has been made by the Detaining Authority in respect of the ground case as well as the adverse case Nos.425/2015, 426/2015, 518/2015 and 592/2015, in paragraph 5 of the Grounds of Detention, the factum of the remand of the detenu in the 1st, 2nd, 3rd and 4th adverse cases in Cr.Nos.619/15, 552/15, 596/15 and 685/15 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.

6. As could be evidenced from the Grounds of Detention, the detenu was arrested in the adverse cases in Cr.Nos.619/2015, 552/2015, 596/15, 685/2015, 425/2015, 426/2015, 518/2015, 592/2015 as well as in the ground case in Cr.No.598/15. But the factum of remand of the detenu in the 1st, 2nd, 3rd and 4th adverse cases in Cr.Nos.619/15, 552/15, 596/15 and 685/15 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 cases, it is not known whether the detenu has filed any bail application 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.

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 grounds.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent is set aside. The detainee is directed to be released, forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, State of Tamil Nadu
Department of Prohibition and Excise Department
Secretariat, Chennai - 600 009.
2. The Commissioner of Police
Veppery, Greater Chennai
3. The Additional Public Prosecutor
High Court, Madras.
4. The Superintendent of Police,
Central Prison, Puzhal, Chennai.
5. The Joint Secretary to Government Public
(Law & order) Fort St. George, Chennai.

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