

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2016

CORAM

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

H.C.P.No.262 of 2016

Selvi

Petitioner

Vs.

1.State of Tamil Nadu
rep.by the Secretary, Home
Prohibition and Excise Department
Fort St.George, Chennai 600 009.

2.The Commissioner of Police
The Commissioner Office
Vepery, 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 detention order in Memo No.29/BCDFGISSSV/2016 dated 28.01.2016 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and to set aside the same and to direct the respondent to produce the petitioner's son Saravanan S/o.Kumaravel aged about 27 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.N.S.Amarnath

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

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O R D E R

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

The petitioner, who is the mother of the detenu, SARAVANAN, Son of Kumaravel, aged about 27 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 28.01.2016 against his son branding him as a "GOONDA" under 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].

2. Though many grounds have been raised in the petition, Mr.N.S.Amarnath 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 was granted conditional bail by the learned Principal Sessions Judge, Chennai in CrI.MP.No.9921 of 2016 in Crime No.2248 of 2015, whereas in the book let furnished to the detenu, more particularly, in page No.188, the bail granted to the co-accused in the very same crime number in CrI.M.P.No.9365 of 2015 dated 04.07.2015 has been enclosed, which was filed by the co-accused and not even by the detenu. He would further add that the offences committed by the detenu in the adverse cases as well as in the ground case relate only to the private offences and do not relate to any public disturbance or do not cause any prejudice to the maintenance of public order. Further, he would submit that some of the documents viz., pages 148, 149, 155 and 164 in the book let were not legible. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the same is vitiated and is liable to be set aside.

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. A careful scrutiny of the Booklet furnished to us, would reveal that as submitted by the learned counsel for the petitioner, the bail order contained in page No.188 of the booklet furnished to the detenu was not the bail order granted to the detenu but granted to the co-accused in the very same Crime No.2248 of 2015 pending on the file of the R3, Ashok Nagar Police Station. This has resulted in the detenu being deprived of making an effective representation. Therefore, the detention order is vitiated and liable to be quashed on the ground of non-application of mind 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

//True Copy//

Sub Assistant Registrar

ga/vj2

To

1.The Secretary to Government
The State of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009.

2.The Commissioner of Police
The Commissioner Office
Vepery, Chennai 600 007.

3.The 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 9.

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