

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.05.2016

CORAM

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

H.C.P.No.305 of 2016

Saranya

...Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Chennai Police, 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 in connection with the order of detention passed by the 2nd respondent dated 09.02.2016 in BCDFGISSSV No.82/2016 against the husband of the petitioner, detenu Aravind M/A 23, S/o.Kannan, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.K.S.Kaviarasu

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 in No.82 BCDFGISSSV/2016 dated 09.02.2016, whereby the detenu by name, Aravind, Son of Kannan, aged about 23 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 him as a "Goonda".

2.Though many grounds have been raised in the petition, Mr.K.S.Kaviarasu, 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 in the ground case [Cr.No.7/2016] and in the 5th adverse case [Cr.No.637/2015] registered by T-12 Poonamallee Police Station respectively and the bail application filed by him in the 5th adverse case in CrI.MP.No.250/2016 on the file of the learned Judicial Magistrate No.II, Poonamallee, 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 the accused in similar case by the learned Principal Sessions Judge, Chennai in CrI.MP.No.6882/2015. 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 5th adverse case, by placing reliance on the bail granted to him in CrI.MP.No.6882/2015 by the learned Principal Sessions Judge, Chennai. 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 case 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.

svki

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

To

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

KR/1/6/16

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