

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.341 of 2016

Sudha ... Petitioner/Wife of Detenu

Vs.

1. The Secretary to the 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, to call for the records in connection with the order of detention passed by the second respondent dated 15.12.2015 in B.C.D.F.G.I.S.S.S.V. NO.91/2015 against the petitioner husband THIRU.THIYAGU @ THIYAGARAJAN, male aged 27 years, S/O.KUMAR who is confined at Central Prison PUZHAI II, CHENNAI and set aside the same and direct the respondents to produce the detenu before this Court.

For Petitioner : Mr.S.Senthilvel

For Respondents : Mr.M.Maharaja
Additional 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 B.C.D.F.G.I.S.S.S.V No.91 of 2015 dated 15.12.2015 whereby the detenu/husband of the petitioner, by name, Thiyagu @ Thiyagarajan, S/o. Kumar, aged 27 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.S.Senthilvel, 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 third adverse case in Cr.No.1179/2015 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 3rd adverse case in Cr.No.1179 / 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.

6. As could be evidenced from the Grounds of Detention, the detenu was arrested in the third adverse case in Cr.No.1179/2015. But the factum of remand of the detenu in the third adverse case in Cr.No.1179/2015 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 grounds.

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 III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, State of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate
Kancheepuram District
Kancheepuram.
3. The Superintendent of Police,
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

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GJ II(CO)
CA(15/06/2016)