

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.6.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.395 of 2016

Solomon .. Petitioner
vs.

1.The State of Tamil Nadu,
Rep. by its Secretary, Home
Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo NO.116/BCDFGISSSV/2016 dated 16/02/2016 passed by the 2nd respondent under the Tamilnadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's cousin brother Appu @ Manikandan S/O. Raji aged about 24 years the detenue, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's cousin brother Appu @ Manikandan s/o Raji aged about 24 years the detenue herein at liberty.

For Petitioner : Mr. D.Gopi Krishnan

For Respondents : Mr.A.N.Thambidurai,
Additional Public Prosecutor

O R D E R

(Order of the Court was made by V.BHARATHIDASAN.J.)

Challenge is made to the order of detention passed by the
second respondent vide Proceedings in Memo
No.116/BCDFGISSSV/2016 dated 16.02.2016, whereby the

detenu/cousin brother of the petitioner, by name, Appu @ Manikandan son of Raji, aged 24 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. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though many grounds have been raised in the petition, 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.

4. Learned counsel appearing for the petitioner submitted that the detenu has been remanded in the 2nd and 3rd adverse cases [Cr.Nos.88 and 107 of 2016] and in the ground case in Cr.No.112/2016 registered by F5 Choolaimedu Police Station and the bail application filed by him in 2nd adverse case before the XVII Metropolitan Magistrate Court, Saidapet, Chennai in CrI.M.P.No.429/16 and the bail applications filed by him in 3rd adverse case and ground case before the Principal Sessions Court, Chennai in CrI.M.P.Nos.2354 and 2355 of 2016, are pending. But the Detaining Authority, in the Grounds of Detention, has relied upon a similar case in Cr.No.956/2014 registered by D2 Anna Salai Police Station, wherein the accused was granted bail by the Principal Sessions Court, Chennai in CrI.M.P.No.11856/2014. Further, the Detaining Authority has stated that there is a possibility of the detenu coming out on bail in all the above stated cases and that if the detenu comes out on bail, he will indulge in such further activities, which are prejudicial to the maintenance of public order. The learned counsel would add that admittedly, in this case, the bail applications filed by the detenu in all the cases are pending. When bail applications are pending, then there is no presumption that the detenu would be granted bail. If that be so, there is no imminent possibility of the detenu coming out on bail on the basis of the bail granted in the similar case. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu would likely to get bail in the ground case.

5. 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.

6. As could be evidenced from the Grounds of Detention, the detenu has been remanded in the 2nd and 3rd adverse cases [Cr.Nos.88 and 107 of 2016] and in the ground case in Cr.No.112/2016 registered by F5 Choolaimedu Police Station and the bail application filed by him in 2nd adverse case before the XVII Metropolitan Magistrate Court, Saidapet, Chennai in CrI.M.P.No.429/16 and the bail applications filed by him in 3rd adverse case and ground case before the Principal Sessions Court, Chennai in CrI.M.P.Nos.2354 and 2355 of 2016, are pending as on the date of the passing of the detention order. If that be so, there is no imminent possibility of the detenu coming out on bail in the said cases. Hence, the Detaining Authority has passed the Detention order in total non-application of mind which would vitiate the detention order.

7. In the light of the above facts, we have no hesitation in quashing the order of detention on the above mentioned ground.

8. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the 2nd 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 II)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
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.

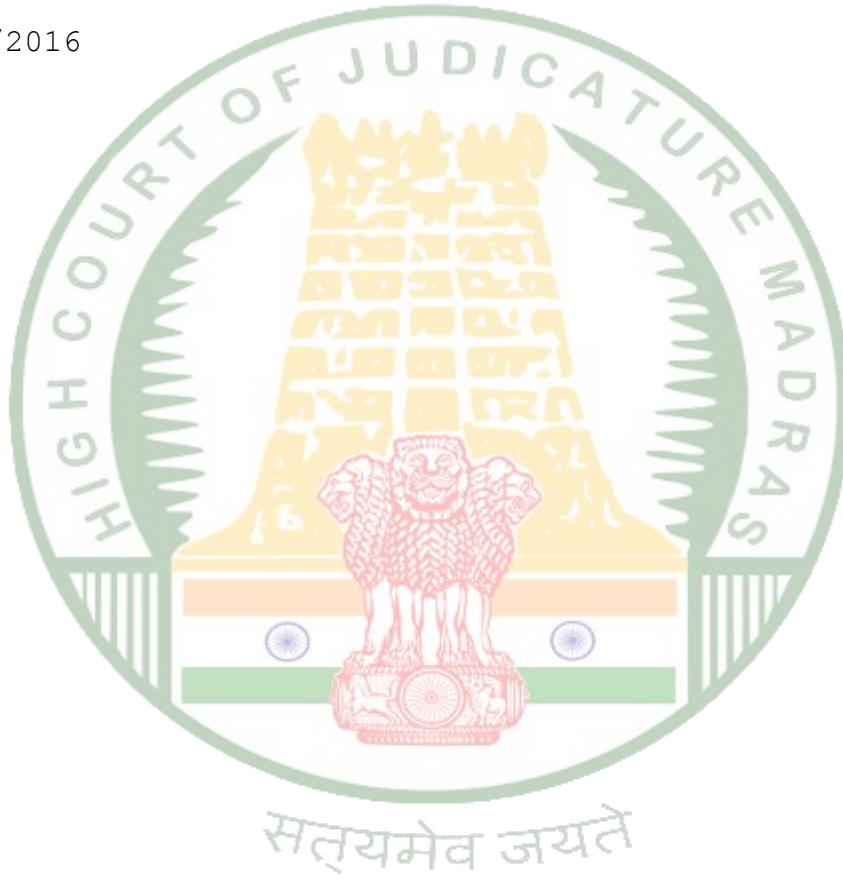
3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai.

5.The Public Prosecutor,
High Court, Madras.

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