

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.05.2016

CORAM

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM
and
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

H.C.P.No.471 of 2016

Manimegalai .. Petitioner
Vs.

1.State of Tamilnadu
rep. by its Secretary to Government
Home, Prohibition & Excise Department
Fort St. George,
Chennai - 600 009

2.The District Magistrate and District Collector,
Salem District, Salem. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas corpus to call for the records relating to the detention order dated 28.08.2015 passed by the second respondent in his proceedings no.CMP No.36/GOONDA/C2/2015 and quash the same and direct the respondents herein to produce the petitioner's son namely, Loganathan son of Arumugam, male aged about 23 years, residing at Veerapandi South Kalaingar Colony, Attayampatti, Salem District, who is presently under going detention in the Central prison, Salem under Section 3(1) of Tamilnadu Prevention of Dangerous Activities of Bootleggers, Drug offenders Forest offenders, Goondas Immoral Traffic offenders, Sand offenders slum Grabbers and video pirates act 1982 under Tamil Nadu Act 14 of 1982 and set him at liberty forthwith.

For Petitioner : Mr.W.Camyles Gandhi

For Respondents : Mr.M.Maharaja,APP

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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 C.M.P.No.36/GOONDA/C2/2015 dated 28.08.2015, whereby the detenu/mother of the petitioner, by name, Loganathan, son of Arumugam, aged 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".

3. Though many grounds have been raised in the petition, Mr.W.Camyles Gandhi, 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. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.277/2015 registered on the file of Mallur Police Station, and he has not filed any bail application in the ground case as on the date of the passing of the detention order. But the Detaining Authority has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the ground case by relying upon the similar case registered by Salem Town Police Station in Cr.No.246/2012 for the offence u/s.341, 392 r/w 397, 427 and 506(ii) of IPC 4(1)(aaa) wherein bail was granted to an accused by name Duraisamy by this Court in CrI.O.P.No.25955 of 2012 on 19.11.2012. This case is not that of the co-accused and placing reliance on the similar case would serve no purpose as the detenu has not filed any bail application in the ground case. The learned counsel would add that admittedly, in this case, the detenu has not filed any bail application in the ground case. When no bail application is filed, then there is no real possibility of the detenu coming out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case. The particulars of the similar case referred to and relied upon by the detaining authority where bail is granted, is not that of the co-accused, so as to compare that case with that of the detenu. Therefore, there is no imminent possibility of the detenu coming out on bail. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail is a mere ipse dixit without any cogent materials. In support of his contention, he relies on the judgments of the Hon'ble Apex Court reported in [a] 2006 [1] MLJ [CrI.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] ; [b]2005 [1] CTC 577 [VELMURUGAN @ VELU Vs. THE COMMISSIONER OF POLICE] and [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] .

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. We have heard the learned counsel for both sides with regard to the facts and citation.

7. As could be seen from the above ground in the order of detention, the detenu is in remand in the ground case [Cr.No.277/2015] and he has not filed bail application in the ground case as on the date of passing of the detention order. When no bail application is filed, there is no real possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility of the detenu coming out on bail in the ground case, would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Even though the Detaining Authority has relied on the similar case to infer that the detenu would be granted bail in the ground case; the same would serve no purpose since the detenu has not filed any bail application. Therefore, the impugned order is passed on mere Ipse-dixit and the order of detention cannot be sustained in the eye of law.

8. 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.

9. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in C.M.P.No.36/GOONDA/C2/2015 dated 28.08.2015 passed by the second respondent is set aside. The detenu, viz., Loganathan, Son of Arumugam, aged 23 years, is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

ssd

To

1.State of Tamilnadu
rep. by its Secretary to Government
Home, Prohibition & Excise Department
Fort St. George,
Chennai - 600 009

2.The District Magistrate and District Collector,
Salem District, Salem.

3. The Superintendent
Central Prison,
Salem

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

5.The Public Prosecutor,
High Court, Madras.

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