

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.6.2016

Coram:

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

H.C.P.No.498 of 2016

Jayalakshmi

.. Petitioner

vs.

1.Government of Tamilnadu, rep. by its
Principal Secretary, Home, Prohibition
and Excise(XVI) Department,
Fort St.George,
Chennai 600 009.

2.The Commissioner of Police,
Coimbatore City.

.. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus, calling for the records in C.No.04/G/IS/2016 dated 27.02.2016 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of the son of the petitioner R.Sivakumar son of Raju aged 33 years now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For petitioner : Mr.R.Subhadra Devi

For Respondents : Mr.A.N.Thambi Durai,
Addl. Public Prosecutor (Crl.side)

ORDER

[Order of the Court was made by S.NAGAMUTHU, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in C.No.04/G/IS/2016 dated 27.02.2016, whereby the son of the petitioner by name R.Sivakumar son of Raju aged 33 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand 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, 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. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the 5th adverse case [Cr.No.452/2015] registered by B-10 Selvapuram Police Station and also in the ground case in Cr.No.470/2015 registered by D-2 Selvapuram Police Station and the detenu has moved bail application in the 5th adverse case in C.M.P.No.136/16 before the learned District and Sessions Judge, Coimbatore and the same was dismissed and again, another bail application was filed in CrI.O.P.No.2535/2016 before this Court and the same was also dismissed on 22.02.2016 and the bail applications filed by him in the ground case before the learned Principal District and Sessions Judge, Coimbatore and the Court of District and Sessions Judge in C.M.P.Nos.3521/2015 and 137 of 2016 were dismissed and the bail application filed before this Court in CrI.O.P.No.2537/16 was also dismissed on 10.2.2016. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail application in 5th adverse case and he has not moved any further bail application in the ground case as well. When no bail application is filed, 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 and in the 5th adverse case and there is imminent possibility of the detenu coming out on bail in the said cases. 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 in the 5th adverse case and in the ground case, is a mere ipse dixit without any cogent materials.

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.

6. As could be seen from the above ground in the order of detention, the detenu is in remand in the ground case [Cr.No.470/2015] and in the 5th adverse case [Cr.No.452/2015] and he has not filed any bail application in the said 5th adverse case and in the ground case as on the date of passing of the detention order. When no bail application is filed, there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail in the ground case as well as in the 5th adverse 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. Therefore on this ground alone the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

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

8. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order dated 27.02.2016 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.

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To:

1. Principal Secretary, Home, Prohibition and Excise (XVI) Department, Fort St. George, Chennai 600 009.

2. The Commissioner of Police, Coimbatore City.

3. The Superintendent, Central Prison, Coimbatore.

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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