

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.88 of 2016

VINOTH @ VINOTHKUMAR

.. Petitioner

Vs.

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

2. The Commissioner of Police
Chennai City Police,
Commissioner Office, Egmore,
Chennai - 600 088

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records relating to the impugned order in BDFGISSV No.793/2015 dated 26.8.2015 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Vinoth @ Vinothkumar, son of Kumar, aged about 26 years, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

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 Memo No.793/B.C.D.F.G.I.S.S.S.V /2015 dated 26.8.2015 whereby the detenu, Vinoth @ Vinoth Kumar, S/o. Kumar, aged 26 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. Ilayaraja Kandasamy, 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 5th adverse case in Cr.No.1995/2015 and in the ground case in Cr.No.2008/2015 registered by S-13, Chrompet Police Station and the bail applications filed by him for the 5th adverse case in CrI.MP.Nos.7272/2015 on the file of the learned Judicial Magistrate, Tambaram is pending. But the Detaining Authority, in the Grounds of Detention, has relied upon a similar case in Cr.No.384/2015 registered by R4 Soundarapandiayanar Angadi Police Station, wherein the accused was granted bail by the Principal Sessions Court, Chennai in CrI.MP.No.2805/2015. 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 application of the detenu is pending and not the order of 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 adverse case [Cr.No.1995/2015], in which case bail application is pending before the learned Judicial Magistrate, Tambaram, in CrI.MP.Nos.7272 of 2015, by placing reliance on a similar case wherein, bail was granted to an accused in a case in Cr.No.384/2015 registered by R-4 Soundarapandiyanar Police Station, by the learned Principal Sessions Court, Chennai in CrI.MP.No.2805/2015. Whenever a 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 application of the detenu is pending and not the order of a superior Court. 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 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.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary, State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Chennai City Police,
Commissioner Office, Egmore,
Chennai - 600 088.
3. The Additional Public Prosecutor,
High Court, Madras.

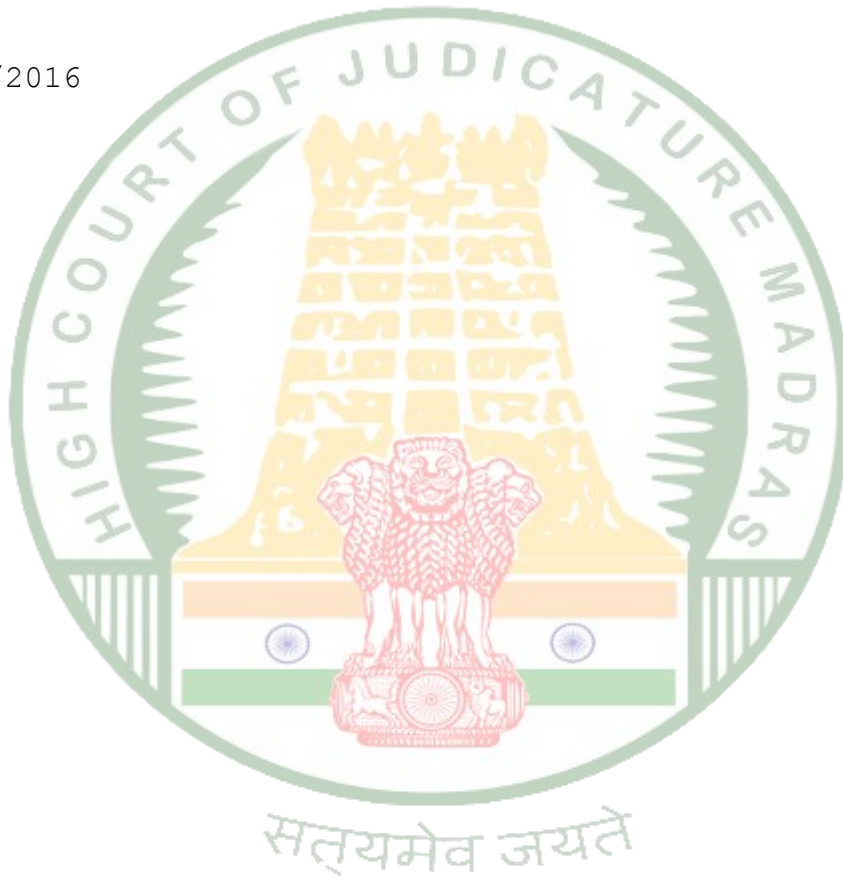
4. The Superintendent of Police,
Central Prison, Puzhal, Chennai.

5. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.

+1cc to Mr.Ilayaraja Kandasamy, Advocate sr.28916

H.C.P.No.88 of 2016

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srg 15/06/2016



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