

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.05.2016

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THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

H.C.P.No. 97 of 2016

Radhika Shankar

.. Petitioner

Vs.

1.State of Tamil Nadu
Rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai -9

2.The Commissioner of Police
Greater Chennai
Vepery, Chennai ..Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, for a direction to produce the body of the detenu namely (Thiru S.Shankar Son of Socrates aged about 33 years) before this Court and set him at liberty forthwith, by calling for the records pertaining to the detention order dated Cr.M.P.No.1279/BCDFGISSSV/2015 dated 30.12.2015 passed by the second respondent, quash the same.

For Petitioner : Mr.Ilayaraja Kandasamy
For Respondents : Mr.M.Maharaja
Addl. Public Prosecutor

सतयमेव जयते
O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in No.1279/BCDFGISSSV/2015 dated 30.12.2015, whereby the detenu/husband of the petitioner, by name, Shankar, Male, aged 33, S/o. Socrates, 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, 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.Learned counsel appearing for the petitioner submitted that on the date of passing the order detention the bail application filed by the detenu in respect of the ground case [Cr.No.340/2015] in CrI.MP.No.6963/2015 was pending before the Chief Metropolitan Magistrate Court, Chennai. But the Detaining Authority, in the Grounds of Detention, has stated that the relatives are taking steps to file further bail application. But, the said factum has not been reflected in the Special Report of the Sponsoring Authority. This is indicative of non-application of mind on the part of the Detaining Authority. Learned counsel for the petitioner further submitted that when a bail application is pending, there is no presumption that the detenu would come out on bail. No cogent materials are available before the detaining authority to apprehend that the detenu is likely to get bail in the ground case and there is imminent possibility of the detenu to come out on bail in the said case. 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 stated that "The Sponsoring Authority has stated that the relatives of Thiru Shankar are taking action to take him on bail in Central Crime Branch Cr.No.332 of 2015 by filing bail application before the appropriate Court....." But, a perusal of the Booklet, in particular, the Special Report of the Sponsoring Authority, it is evident that nothing has been stated by the Sponsoring Authority to the effect of the relatives taking steps pursuant to the dismissal of the earlier bail application filed by the detenu in the ground case. 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 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.

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 dated 30.12.2015 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 VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Prohibition and Excise Department
Fort St. George, Chennai -9
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai
3. The Public Prosecutor
High Court, Madras.
4. The Superintendent, Central Prison,
Puzhal, Chennai-66.
5. The Joint Secretary to Government Public
(Law & order), Fort St. George,
Chennai. 600 009.

KSJ(CO)
EU(1/06/2016)

H.C.P.No.97 of 2016