



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2016

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THE HONOURABLE MR. JUSTICE A.SELVAM
and
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

H.C.P(MD)No.1790 of 2015

Avudayammal

... Petitioner

Vs.

1. The Principal Secretary to Government,
Home Prohibition and Excise (xiv) Department,
Secretariat, Chennai.
 2. The District Collector and
District Magistrate,
Tirunelveli District,
Tirunelveli.
 3. The Inspector of Police,
Munneerpallam Police Station,
Tirunelveli District.
[Crime No.331/2015]
 4. The Superintendent of Police,
Palayamkottai,
Tirunelveli District.
- ... Respondents

Prayer : This Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus to call for records pertaining to the proceedings in M.H.S.Confdl. No.127/2015, dated 20.11.2015 on the file of the 2nd respondent and quash the detention order against the petitioner's son Pitchumani @ Pitchaimani, S/o.Balasubramanian, aged 25 years and direct the 4th respondent to set him at liberty from the Central Jail Palayamkottai and pass such further orders.

For Petitioner : Mr.P.Ramasamy

For Respondents : Mr.C.Ramesh
Additional Public Prosecutor



ORDER RESERVED DT: 23.03.2016

ORDER DELIVERED DT: 05.04.2016

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ORDER

(Order of the Court was made by G.CHOCKALINGAM, J.)

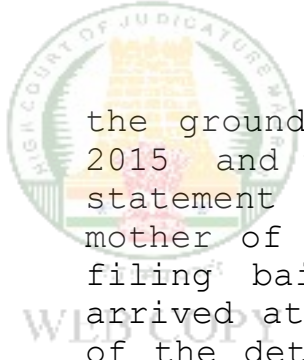
Challenge is made to the order of detention passed by the second respondent vide, Proceedings in M.H.S.Confdl. No.127/2015, dated 20.11.2015, whereby the petitioner's son, the detenu herein Pitchumani @ Pitchaimani, S/o.Balasubramanian, aged about 25 years, was ordered to be detained under the provisions of 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) branded him as a "GOONDA".

2.As per the grounds of detention, dated 20.11.2015 passed by the second respondent, the detenu has come to the adverse notice of the police in four cases, were registered against him in Crime No.168 of 2013 under Sections 302, 120-B r/w 34 IPC on the file of the 3rd respondent, in Crime No.189 of 2013 under Sections 341, 294(b) and 307 of IPC, on the file of the Inspector of Police, Suthamallai Police station, in Crime No.350 of 2014 under Sections 447, 427 and Section 3 of PPDL Act @ 147, 148, 447, 427 IPC r/w Section 3 of TNPPDL Act, on the file of the 3rd respondent and in Crime No.329 of 2015 under Sections 294(b), 353, 506(II) IPC on the file of the 3rd respondent. The first and third adverse cases are in the trial stage and the second and fourth adverse cases are under investigation.

3.The order of detention was passed on the basis of the ground case alleged to have registered on 11.11.2015 on the file of the 3rd respondent, in Crime No.331 of 2015 under Sections 294 (b), 307 and 506(ii) of IPC, in which he has been remanded. On being satisfied that the detenu is habitually indulging in activities, affecting in public Law and Order, the Detaining Authority has clamped the Detention Order on the detenu.

4.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.

<https://hcservices.ecourts.gov.in/hcservices/>
5.The learned counsel appearing for the petitioner has contended that the detenu has been remand in the ground case in Crime No.331 of 2015 and he has not filed any bail application in



the ground case as well as the adverse case in Crime No.329 of 2015 and that the detaining authority has placed reliance on the statement of the sponsoring authority to the effect that the mother of the detenu is taking steps to take him out on bail by filing bail application and that the detaining authority has arrived at the subjective satisfaction that there is very likely of the detenu coming out on bail and there is a real possibility of his coming out on bail by relying upon the similar cases.

6.The learned counsel has further contended that admittedly, in this case, no bail application has been filed by the detenu and now, he is in jail. When no bail application is filed, there is no presumption that the detenu would be granted bail and there is no real possibility of detenu coming out on bail. No cogent materials are available before the detaining authority to conclude that the detenu is likely to get bail in the ground case as well as in the adverse cases. The apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out of bail is not justifiable for the reason that he has pre-judged the matter. Hence, he has prayed that the impugned order of detention has to be set aside and the petition has to be allowed.

7.Per contra, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the order of detention. Hence, the petition does not merit any consideration and the same is liable to be dismissed.

8.This court has given careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

9.It is seen from the ground in the order of detention, the detenu has been remanded in the ground case [Cr.No.331 of 2015] and produced before the Judicial Magistrate No.V. Tirunelveli and now, he is lodged at Central Prison, Palayamkottai as remand prisoner.

10.In this case, the detenu has not filed any bail application in the ground case in Crime No.331 of 2015 and also in one of the adverse case in Crime No.329 of 2015. When no bail application is filed, there is no imminent possibility of the detenu coming out on bail.

11.A perusal of the affidavit filed by the Sponsoring Authority the Inspector of Police attached to Munneerpallam Police station, specifically stated that the detenu has not filed any bail application in connection with the cases in Crime Nos.329 and 331 of 2015 on the file of the Munneerpallam police station



and further, he has not stated anything regarding the above filing of the bail application in the above cases. But the detaining authority, in his order has specifically stated that:-

"I am also aware that the sponsoring Police Officer has stated that Thirumathi.Avoodaiyammal mother of Thiru.Pitchumani alias Pitchaimani is taking action to take out her son on bail by filing a bail application for Munneerpallam Police Station Crime Number 329/2015 and Munneerpallam Police Station Crime Number 331/2015."

But there is no material available in the affidavit filed by the above said Inspector of Police, Munneerpallam Police station.

12.On perusal of the entire records, there is no material or evidence or affidavit available to the effect that the mother of the detenu is taking steps to take out the detenu on bail.

13.This court does not know how the detaining authority has mentioned in the detention order to come to a conclusion that the mother of detenu is taking steps to file bail application.

14.In this case, on the entire reading of the impugned order, the detaining authority has not relied upon the materials supplied to the detenu and also not produced the copy before this court. Hence, detaining authority without any basis and without any evidence has come to the conclusion that the mother of the detenu is taking steps to come out on bail is without basis and the detention authority has not applied his mind before passing the detention order. Therefore, the subjective satisfaction arrived at by the detaining authority that there is every likelihood of his coming out on bail in the ground case, by relying upon a similar cases, 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. It is nothing but pre-judging the matter. Hence, this court is of the considered view that the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

15.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.

<https://hcservices.ecourts.gov.in/hcservices/>

16.In the light of the above and law, this court no hesitation in quashing the order of detention on the above



mentioned grounds.

17. In the result, the Habeas Corpus Petition is allowed and the impugned detention order, dated 20.11.2015 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 (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home Prohibition and Excise (xiv) Department,
Secretariat, Chennai-9
2. The District Collector and
District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Inspector of Police,
Munneerpallam Police Station,
Tirunelveli District.
4. The Superintendent of Police,
Palayamkottai, Tirunelveli District.
5. The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat, Chennai - 9
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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JM/GSV-PM/13.04.2016/5P-7C

HCP (MD) No.1790 of 2015
05.04.2016