

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.05.2017

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

H.C.P No.183 of 2017

Vijayakumar

.. Petitioner/Brother of
the Detenue

Vs

- 1 The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. District Magistrate &
District Collector,
Thiruvallur District,
Thiruvallur

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 13.01.2017 in B.C.D.F.G.I.S.S.S.V. No.06/2017 against the petitioner's brother Sudhakar, Male, aged 25 years, S/o Kasi, who is confined at Central Prison, Puzhal II, Chennai, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
For respondents: Mr.V.M.R. Rajentren,
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by M.V.Muralidaran, J.,)

The petitioner, who is the brother of the detenu Sudhakar, has come up with this habeas corpus petition, challenging the detention order passed against his brother by the second respondent, vide proceedings B.C.D.F.G.I.S.S.S.V. No.06/2017 dated 13.01.2017.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Learned counsel appearing for the petitioner submitted that, though the detaining authority has stated in the detention order dated 13.01.2017 that a case was registered for the IPC offence, he has come to the conclusion that the detenu is a Sand Offender as contemplated under Section 2(gg) of the Tamil Nadu Act of 14 of 1982, which shows clear non application of mind on the part of the detaining authority and hence the impugned detention order is vitiated. On this ground the impugned detention order 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. A perusal of the detention order reveals that though the detaining authority has stated in paragraph No.4, that a case in Periyapalayam Police Station Crime No.04/2017 was registered for the offence under Sections 379, 430 r/w 294(b), 353, 307 IPC, and he has satisfied that Sudhakar is habitually committing crimes, he has come to the conclusion in the same Paragraph that the detenu is a Sand Offender as contemplated under Section 2 (gg) of the Tamil Nadu Act of 14 of 1982, which shows clear 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.

6. 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.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 13.01.2017, 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

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009
2. District Magistrate &
District Collector,
Thiruvallur District,
Thiruvallur.
3. The Superintendent, Central Prison
Puzhal II, Chennai
4. The Joint Secretary to Government
Public(law and order)
Fort. St. George
Chennai 9
5. The Public Prosecutor, High Court, Chennai.

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