

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.05.2017

CORAM

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

H.C.P.No.2694 of 2016

Lakshmi

..Petitioner/
wife of the detenu

Vs.

1. The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai 600 009.

2. The District Collector and
District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in connection with the order of Detention passed by the second respondent dated 18.12.2016 in D.O.No.61/2016/C2 against the petitioner husband Elumalai, male, aged 35 years S/o.Govindan, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.V.MURALIDARAN, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in D.O.No.61/2016/C2, dated 18.12.2016, whereby the detenu/husband of the petitioner, by name, Elumalai, male, aged 35 years S/o.Govindan, 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, Mr.D.Balaji, 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 the detenu has been remanded in the ground case in Crime No.594/2016 registered by Kalambur Police Station and the bail application filed by him for the above said case in Cr.M.P.No.5457/2016 on the file of the Tiruvannamalai District and Sessions Court was dismissed on 14.12.2016 and the further bail application filed by him before this Court in CrI.O.P.No.26969/2016 was pending as on the date of passing of the detention order. But the Detaining Authority, in the Grounds of Detention, has relied upon the bail being granted to an accused by the Tiruvannamalai District and Sessions Court in Cr.M.P.No.2900/2016. 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 Court below. 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 5, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case [in which case bail application is pending before this Court in CrI.OP.No.26969/2016, subsequent to the dismissal of the earlier bail application in CrI.M.P.No.5457/2016 by the Court below] by placing reliance on the bail granted to the accused in CrI.M.P.No.2900/2016 by the learned District and Sessions Judge, Tiruvannamalai. Whenever a bail application in connection with any adverse case or ground case is pending before a High Court and if the Detaining

Authority arrives at the subjective satisfaction that the detenu would be granted bail in the said cases by placing reliance upon an order passed in a similar case, such order should be one passed by the High Court itself and not the order of the Court below, as has been done in the instant 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 18.12.2016 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.

Sd/-
Asst. Registrar (CCC)

/true copy/

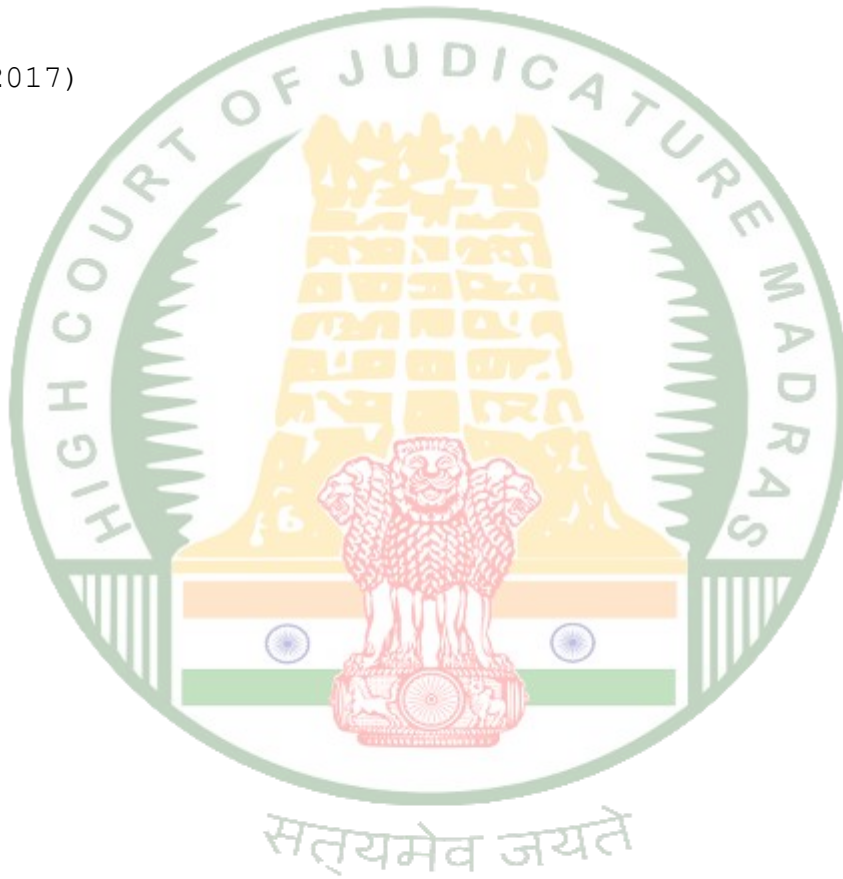
Sub Asst. Registrar

1. The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. The District Collector and
District Magistrate,
Thiruvannamalai District,
Thiruvannamalai.
3. The Superintendent, Central Prison,
Vellore.

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

H.C.P.No.2694 of 2016

NRI (CO)
VR(07/06/2017)



WEB COPY