

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2016

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THE HON'BLE MR.JUSTICE G.CHOCKALINGAM  
and  
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

H.C.P.No.342 of 2016

Dhanam

.. Petitioner

Vs.

- 1.The State of Tamil Nadu  
rep.by the Secretary  
Home Prohibition and Excise Department  
Fort St.George, Chennai - 600 009.
2. The Commissioner of Police  
The Commissioner office  
Vepery, Chennai - 600 007

...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 detention order in Memo No.23/BCDFGISSV/2016 dated 27.01.2016 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's son Murugan S/o. Thangaraj, aged about 23 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's son Murugan S/o. Thangaraj aged about 23 years the detenu herein at liberty.

For Petitioner : Mr.D.Gopi Krishnan

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 B.C.D.F.G.I.S.S.S.V No.23 of 2016 dated 27.01.2016 whereby the detenu/son of the petitioner, by name, Murugan S/o. Thangaraj, aged 23 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.D.Gopikrishnan, 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 Detaining Authority has relied on a similar case to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out bail in the ground case. But, in respect of the said similar case, viz., the case in Cr.No.127/2015 on the file of Manimangalam Police Station, the accused therein was granted bail by this Court. But, in the Booklet, the copy of the relaxation of the condition imposed against the accused therein alone was furnished to the detenu and the copy of the bail order was not furnished. This factum of not supplying essential materials would deprive the detenu from making effective representation. Thus, the detention order is vitiated on this ground alone 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.A perusal of the Grounds of Detention, in particular paragraph No.4, it is seen that the Detaining Authority has placed reliance on a similar case to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the adverse cases and in the ground case. But a perusal of the booklet supplied to the detenu, in particular, page No.309, it is evidenced that a copy of the relaxation of the condition issued by this Court was furnished instead of the copy of the bail order in the said similar case in Crime No.127 of 2015. This non furnishing of the relevant materials has resulted in the detenu being deprived of making an effective representation. 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 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.

-s/d-  
Assistant Registrar (CSV)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary, State of Tamil Nadu  
Home, Prohibition and Excise Department  
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,  
The Commissioner office  
Vepery, Chennai - 600 007.
3. The Superintendent of Police,  
Central Prison, Puzhal, Chennai
4. The Joint Secretary to Government  
Public Law and Order Fort St. George,  
Chennai-9
5. The Public Prosecutor  
High Court, Madras.

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