

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2015

CORAM

THE HONOURABLE DR. JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR. JUSTICE C.T.SELVAM

H.C.P.No.1567/2015

Fathima Kurishya

.. Petitioner/Wife of
detenue

Vs

1. The State rep. By
Secretary to Government (Home)
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2. Commissioner of Police,
Chennai District, Chennai.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus, calling for the entire records, pursuant to the detention order issued by the 2nd respondent vide No.C.D.No.380/BCDFG/SSSV/2015 dated 09.05.2015 and set aside the same and consequently, direct the respondents to produce the detenue Jahir Hussain @ Appu, S/o. P.A.Amsa aged about 28 years petitioner herein, now confined at Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.M.Sathishkumar

For Respondents : Mr.M.Maharaja

Additional Public Prosecutor

WEB COPY
ORDER

[Order of the Court was made by S.TAMILVANAN, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No.380/BCDFGISSSV/2015 dated 09.05.2015, whereby the detenu, by name, Jahir Hussain @ Appu, son of P.A.Amsa, aged 28 years, 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, 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 page Nos. 275, 403 and certain other pages in the booklet furnished to the detenu are illegible and could not be read at all. This illegible copies would deprive the detenu of making effective representation to the authorities against the order of detention. Thus, the detention order is vitiated on these grounds 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 booklet supplied to the detenu would show that the copies of documents referred and relied upon and referred to by the Detaining Authority, in particular, page Nos. 275, 403 and certain other pages are illegible and are totally unreadable. This 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(J)
dt:08/10/2015

True Copy

Sub-Assistant registrar

cse
To

1. The State rep. By
Secretary to Government (Home)
Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2. Commissioner of Police,
Chennai District,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

4. The Joint Secretary to Government
Public Law and order
Fort St. George Chennai-9

5. The Superintendent of Central Prison,
Puzhal, Chennai.

+1 cc to Mr.M.Sathish Kumar Advocate sr.50205

H.C.P.No.1567/2015

ala(co)
aa09/10/2015