

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.12.2015

Coram:

THE HON'BLE MR.JUSTICE R.SUDHAKAR

and

THE HON'BLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.2486/2015

Mohana

... Petitioner

-vs-

1.The Secretary of State
State of Tamil Nadu
Prohibition & Excise Department
St George Fort, Chennai 600 009.

2.The Commissioner of Police
Poonamallee High Road, Vepery
Chennai 600 007.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus, calling upon the production of the records relating to the detention order dated 30.05.2015 made in detention order Memo No.424/BCDFGISSSV/2015 passed by the 2nd respondent herein, quash the same and direct the respondents to produce the body or person of the petitioner's son Dilli @ Dillibabu, son of Dayalan, aged about 26 years, branded as Goonda and now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For petitioner : Mr.C.V.Kumar

For Respondents: Mr.M.Maharaja
Addl. Public Prosecutor

WEB COPY

O R D E R

(Order of the Court was made by P.N.PRAKASH, J.)

The son of the petitioner is the detenu herein. The detenu has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under the order of the second respondent passed in Memo No.424/BCDFGISSSV/2015 dated 30.05.2015.

2. Though the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he mainly focused his arguments on the ground of non-application of mind on the part of the Detaining Authority. He contended that the bail applications filed by the detenu in the 3rd and 4th adverse cases and in the ground case in Cr.Nos.638/2015, 997/2015 and 999/2015 were dismissed by the learned Principal District and Sessions Judge, Chengalpattu, on 14.05.2015 ; but has furnished only two bail application numbers in CrI.MP.Nos.922/2015 and 923/2015 and has not furnished the other bail application number which was dismissed on 14.05.2015 and therefore, on this sole ground alone, the detention order is liable to be quashed.

3. Learned counsel appearing for the petitioner submitted that page Nos.451, 453, 555, 557 and 559 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 this ground also and the same is liable to be quashed.

4. We have heard the learned Additional Public Prosecutor on the above submission.

5. A careful scrutiny of both the Grounds of Detention and the Booklet furnished before us, would reveal that there is a discrepancy in mentioning the Criminal Miscellaneous Petition Number in respect of the bail petitions filed in the ground case as well as in the adverse cases No.3 and 4. In paragraph 4 of the Grounds of Detention, it reads thus:

"..... and he has moved a bail application for J-11 kannagi Nagar Police Station Cr.Nos.638/2015, 997/2015 and 999/2015 before the District Principal Sessions Court, Chengalpattu in CrI.MP.Nos.922/2015, 923/2015 and the same were dismissed on 14.05.2015....."

Thus, the non-mentioning of the third bail application number which was moved by the detenu for want of bail, is indicative of total non-application of mind on the part of the Detaining Authority which would vitiate the order of detention and the same is liable to be quashed.

6. Further, 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.451, 453, 555, 557, 559 etc., 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 also.

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 grounds.

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.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To :

1.The Secretary of State
State of Tamil Nadu
Prohibition & Excise Department
St George Fort, Chennai 600 009.

2.The Commissioner of Police
Poonamallee High Road, Vepery
Chennai 600 007.

3.The Joint Secretary to Government,
Public (Law & Order),
Fort. St. George,
Chennai-9.

4.The Superintendent,
Central Prison,
Puzhal,
Chennai-600 066.

5.The Public Prosecutor
High Court, Madras.

H.C.P.No.2486/2015

ala[co]
srg 20/01/2016



WEB COPY