

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

CORAM

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

H.C.P.No.664 of 2015

Santha

...Petitioner

Vs.

1. The State of Tamil Nadu
rep. By its Secretary to the Government,
Prohibition and Excise Department (Home),
Secretariat, Chennai - 9.

2. The Commissioner of Police,
Chennai.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detenu's detention order passed by the second respondent dated 25.11.2014 in No.BDFGISSV No.1958/2014 and set aside the same and produce the detenu Kadhar Basha, male, aged about 23, son of Masthan, now detained in Central Prison-II, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.S.Elankumaran

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

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 No.1958/2014 dated 25.11.2014, whereby the detenu/the grandson of the petitioner, by name, Kadhar Basha, son of Masthan, aged 23 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, Mr.S.Elankumaran Vel, 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.269 and 273 in the booklet furnished to the detenu are illegible and could not be read at all. These 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 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.269 and 273 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.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government,
Prohibition and Excise Department (Home),
Secretariat, Chennai - 9.
2. The Commissioner of Police,
Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

SAI (CO)
PSI (02.07.2015)

H.C.P.No.664 of 2015

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