

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

H.C.P.No.2165 of 2015

Ashok Kumar

... Petitioner

-Vs-

1.The Secretary to Government of Tamil Nadu
Prohibition & Excise Department, (Home)
Secretariat, Fort St.George
Chennai 600 009.

2.The Commissioner of Police
Commissioner Office-Greater Chennai
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 on the file of 2nd respondent in Memo No.616/BCDFGISSSV/2015 dated 27.07.2015 and quash the same as illegal and set the detenu Ashok Kumar S/o Doss at liberty who is now confined at Central Prison, Puzhal, Chennai to produce before this Court.

For Petitioner : Mr.N.Iyyakannu

For Respondents : Mr.A.N.Thambidurai
Addl. Public Prosecutor

सत्यमेव जयते
O R D E R

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

This Habeas Corpus Petition has been filed by the detenu, namely Ashok Kumar, aged about 23 years, S/o Doss, to issue a Writ of Habeas Corpus, calling for the records relating to the impugned order passed by the 2nd respondent in Memo No.616/BCDFGISSSV/2015, dated 27.07.2015, detaining him, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), branding him as a "Goonda" as contemplated u/s 2

(f) of the Tamil Nadu Act 14 of 1982, and to quash the same and to set him at liberty.

2. Though, many grounds have been raised in the petition, Mr.N.Iyyakannu, 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 first page of the F.I.R. copy in Crime No.809 of 2014, on the file of the F-1 Chindadripet Police Station, has not been furnished to the detenu, which would deprive the detenu of making an 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 first page of the FIR relied upon and referred to by the Detaining Authority in Cr.No.809 of 2014 on the file of the F.1 Chindadripet Police Station has not been furnished to the detenu. 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 27.07.2015 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(CS IV)

//True Copy//

Sub Assistant Registrar

gms
To

1.The Secretary to Government of Tamil Nadu
Prohibition & Excise Department, (Home)
Secretariat, Fort St.George
Chennai 600 009.

2.The Commissioner of Police
Commissioner Office-Greater Chennai
Vepery, Chennai 600 007.

3. The Superintendent, Central Prison,
Puzhal, Chennai.

4. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai. 600 009.

5.The Public Prosecutor,
Madras High Court, Chennai.

सत्यमेव जयते

H.C.P.No.2165 of 2015

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