

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2016

CORAM

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

H.C.P.No.2174 of 2015

Thirumalai Azhagu

.. Petitioner

vs.

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Chennai Police,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 600 007.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records of the detention order made in Detention Order dated 13.08.2015 in Memo No.736/BCDFGISSSV/2015/2015 passed by the Commissioner of Police, Chennai Police, Office of the Commissioner of Police (Goondas Section), Vepery, Chennai - 600 007, the second respondent herein and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu Thiru.Vinoth @ Vinoth Kumar S/o Thirumal Azhagu aged about 22 years at liberty forthwith.

For Petitioner : Mr.S.Madhusudhanan

For Respondents : Mr.A.N.Thambidurai,
Additional Public Prosecutor

ORDER

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

The petitioner, who is the father of the detenu Thiru Vinoth @ Vinoth Kumar, son of Thirumal Azhagu, aged about 22 years, has come forward with this petition challenging the detention order passed by the second respondent, dated 13.08.2015, against his son branding him as a "Goonda" under 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].

2. Though, many grounds have been raised in the petition, Mr. S. Madhusudhanan, 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 F.I.R., copy in Crime No. 561 of 2015 dated 30.04.2015, on the file of the T.12 Poonamallee Police Station, furnished to the accused and found 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 Crime No. 561 of 2015 dated 30.04.2015, on the file of the T.12 Poonamallee Police Station 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 in Memo No.736/BCDFGISSSV/2015 dated 13.08.2015 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai - 600 009.

2.The Commissioner of Police,
Chennai Police,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai - 600 007.

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
Central Prison, Puzhal Chennai

सत्यमेव जयते

H.C.P.No.2174 of 2015

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