

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.2395/2015

Govindammal

.. Petitioner

Vs

1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009

2.The District Magistrate-cum-
District Collector
Tiruvallur District
Tiruvallur.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS to call for the records of the detention order in B.C.D.F.G.I.S.S.S.V. No.28/ 2015, dated 25.08.2015, on the file of the second respondent and quash the same and produce the petitioner's husband, namely, Kumar, S/o.Mohan, aged about 46 years, confined at Central Prison, Puzhal, Chennai, and to set him at liberty.

For Petitioner : Mr.V.Paarthiban

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

ORDER

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

This Habeas Corpus Petition has been filed, by the wife of the detenu, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in B.C.D.F.G.I.S.S.S.V. No.28/2015, dated 25.08.2015, passed by the 2nd Respondent, detaining the detenu, namely, Kumar, S/o.Mohan,

aged about 46 years, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), branding him as a "Sand Offender", in the Central Prison, Puzhal, Chennai-66, and to quash the same and to direct the Respondents to produce the body of the detenu and to set him at liberty, forthwith.

2. We have heard the learned counsel appearing on behalf of the petitioner and the learned Additional Public Prosecutor appearing on behalf of the State and we have also perused the records, carefully.

3. Though, a number of grounds had been raised by the petitioner, while challenging the impugned order of detention, dated 25.08.2015, the learned counsel, appearing on behalf of the petitioner, had submitted that, the detaining authority had stated in the grounds of detention that the detenu had made a confession with regard to his name and address and with regard to the act of theft of sand, which he is said to have committed. He had further submitted that, though, the detaining authority has relied on the said confession statement to pass the detention order, the said confession statement had not been furnished to the detenu, hence, the detenu had been prevented from making an effective representation against the impugned order of detention.

4. The said submission made by the learned counsel appearing on behalf of the petitioner, had not been refuted by the learned Additional Public Prosecutor.

5. It is noted from the grounds of detention that the detenu had made a confession with regard to his name and address and with regard to the act of theft of sand, which he is said to have committed. It is further noted that, though the detaining authority has relied on the said confession statement to pass the detention order, the said confession statement had not been furnished to the detenu. The non-furnishing of the confession statement, would prejudice the detenu, in making an effective representation. In such circumstances, we find that there is non-application of mind on the part of the detaining authority, in passing the detention order. Therefore, we are inclined to set aside the impugned detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 25.08.2015, 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.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009
2. The District Magistrate-cum-
District Collector
Tiruvallur District
Tiruvallur.
3. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George,
Chennai-9.
4. The Superintendent,
Central Prison,
Puzhal, (Chennai)
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2395/2015

ala(CO)
srg(20/04/2016)