

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR. JUSTICE P.N.PRAKASH

H.C.P.No.2426 of 2015

Mr.Migaya Jebakumar

... Petitioner

Vs.

1. The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
2. The Commissioner of Police
Chennai City, Egmore, Chennai 600 008.
3. The Inspector of Police
R10 MGR Nagar Police Station
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 in Memo No.220/BCDFGISSSV/2015 dated 11.03.2015 passed by the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce the detenu Joshwa Wilson, son of Paul Sundar, 25 years, who is now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Saran Kumar

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

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No.220/BCDFGISSSV/2015 dated 11.03.2015, whereby the detenu/the brother of the petitioner, by name, Joshwa Wilson, son of Paul Sundar, aged 25 years, was branded as a "Goonda" under the

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamilnadu Act 14 of 1982].

2. Though many grounds have been raised in the petition, Mr. Saran Kumar, 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. 349, 351, 381, 383 and 385 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 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 particular, page Nos. 349, 351, 381, 383 and 385 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 alone.

7. It is 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(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
2. The Commissioner of Police
Chennai City, Egmore, Chennai 600 008.
3. The Inspector of Police
R10 MGR Nagar Police Station
Chennai.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
(In duplicate for Communication to Detenu)
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Saran Kumar, Advocate, S.R.No.44076

H.C.P.No.2426 of 2015

SAI (CO)
CA(05/02/2016)