

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.2663 of 2015

Mangai

... Petitioner

Vs.

1. The Secretary to Govt.,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police,
Chennai City.

... 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 in connection with the order of detention passed by the 2nd respondent dated 17.09.2015 in Memo No. 924/BCDFGISSSV/2015 against the petitioner's son Subramani @ Aalayamani, Male aged 28 years, S/o. Elumalai, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.S. Senthilvel

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

ORDER

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

This Habeas Corpus Petition is filed, by the wife of the detenu, namely, Subramani @ Aalayamani, to issue a Writ of Habeas Corpus, to call for the records, relating to the impugned detention order made in MEMO No. 924/BCDFGISSSV/2015 dated 17.09.2015, passed by the 2nd Respondent, detaining the detenu, under Section 2(f) of the Tamil Nadu Act 14/1982, branding him as a "Goonda" in the Central Prison, Puzhal II, Chennai, and to quash the same and to direct the respondents to

produce the detenu before this Court and set him at liberty forthwith.

2.Though, many grounds have been raised in the petition, Mr.S. Senthilvel, 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 F.I.R. copy in Crime No.414/2014, on the file of Maraimalai Nagar Police Station, at page Nos. 1 & 3, found in the booklet and 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 and on this ground, 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, found in the booklet at page Nos. 1 & 3, relating to FIR copy in Crime No. 414 of 2014, on the file of Maraimalai Nagar Police Station, 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 in Memo No. 924/BCDFGISSSV/2015 dated 17.09.2015, 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 VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Govt.,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
Chennai City.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.
(In duplicate for communication to Detenue)
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 2663 of 2015

SAI (CO)
CA(26/04/2016)

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