

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

CORAM

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

H.C.P.No.2711 of 2015

Tamil Selvi .. Petitioner/Wife of the
detenue

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Govt.,
Home, Prohibition & Excise (XVI) Dept.,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The District Magistrate and
District Collector of
Thiruvallur District,
Thiruvallur. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the 2nd respondent in his office ref. B.C.D.F.G.I.S.S.V. No. 30/2015 dated 08.09.2015 against the petitioner's husband namely, Thiru. Murugesan, S/o. Subburayalu, aged about 41 years at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner :: Mr.E. Kannadasan
For Respondents :: Mr.A.N.Thambidurai,
Addl. 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, Murugesan, to issue a Writ of Habeas Corpus, to call for the records, relating to the order of detention, in

his office Ref. B.C.D.F.G.I.S.S.S.V. No. 30/2015 dated 08.09.2015, passed by the 2nd Respondent, detaining the detenu, under Section 2(g) of the Tamil Nadu Act 14/1982, branding him as an "Immoral Traffic Offender", in the Central Prison, Puzhal, Chennai, and to set aside 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.E. Kannadasan, 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 Special Report relating to the Ground case, found at page NO. 40 of the booklet and furnished to the detenu, is illegible and could not be read at all. This illegible copy, 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 copy of the document referred and relied upon and referred to by the Detaining Authority, found in the booklet at page No.40, relating to the Special Report in respect of the Ground Case is illegible and 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 ref. B.C.D.F.G.I.S.S.S.V. No. 30/2015 dated 08.09.2015 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Govt.,
Home, Prohibition & Excise (XVI) Dept.,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The District Magistrate and
District Collector of
Thiruvallur District,
Thiruvallur.
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

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