

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.2800 of 2015

Muthammal

Petitioner

vs.

1.The State of Tamil Nadu,
Represented by its Secretary
to Government, Home
Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 7.

... 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 made in Memo No.1085/B.C.D.F.G.I.S.S.V/2015 dated 05.10.2015 passed by the Commissioner of Police, Greater Chennai Police, Vepery, Chennai - 7, the second respondent herein and set aside the same and direct the respondents to produce the detenue before this Court and set the detenue Thiru.Venkatesan, son of Santhakumar, aged 39 years now confined in Central Prison, Puzhal II, Chennai at liberty.

For Petitioner .. Mr.R.Balakrishnan

For Respondents.. Mr.A.N.Thambidurai,APP

ORDER

(Order of the Court was made by M.JAICHANDREN, J.,)

The petitioner, wife of the detenu, Thiru.Venkatesan son of Santhakumar, aged 39 years, challenges the Detention Order passed by the second respondent, detaining him as a Goonda, under the Tamilnadu Prevention of Dangerous Activities of

Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Act 14 of 1982], vide order made in Memo No.1085/B.C.D.F.G.I.S.S.S.V/2015, dated 05.10.2015.

2.Though, many grounds have been raised in the petition, Mr.B.Balakrishnan, 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 remand order in D.I.F.I.R 1537/2015 dated 11.09.2015 pertaining to K.10 Koyambedu Police Station Cr.No.764/2015, relating to the adverse case, had not been furnished to the detenu. Non furnishing of the said document, would deprive the detenu of making effective representation, to the authorities, against the order of detention. Thus, the detention order is vitiated, on this ground 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 remand order in D.I.F.I.R 1537/2015 dated 11.09.2015 pertaining to K.10 Koyambedu Police Station Cr.No.764/2015, relating to the adverse case, had not been furnished to the detenu. 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.

9. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned ground.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in Memo No.1085/B.C.D.F.G.I.S.S.S.V/2015, dated 05.10.2015, 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(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 7.

3.The Public Prosecutor,
Madras High Court, Madras.

4.The Superintendent,
Central Prison,
Puzhal, Chennai.

5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

H.C.P.No.2800 of 2015

ak(CO)
srg(21/04/2016)