

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2016

CORAM

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

H.C.P.No.3028/2015

Chand Basha @ Basha Khan @ Mohammed Chand Basha .. Petitioner

Vs.

- 1.The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chenna 600 009.
- 2.The Commissioner of Police
Chennai Police, O/o.the commissioner of
Police [Goondas section], Vepery
Chennai 600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the order of detention passed by the 2nd respondent in BCDFGISSSV No.349/2015 dated 22.04.2015, set aside the same, direct to produce the detenu Mr.Chand Basha @ Basha Khan @ Mohammed Chand Basha, S/o.Mohammed Munir Basha, aged about 54 years, and presently detained in Central Prison, at Puzhal, Chennai before this Court and set him liberty.

For Petitioner : Mr.A.D.Jagdish Chandira
For Respondents : Mr.M.Maharaja, APP

सत्यमेव जयते

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 BCDFGISSSV No.349/2015 dated 22.04.2015 whereby the detenu/the petitioner herein, by name, Chand Basha @ Basha Khan @ Mohammed Chand Basha, son of Mohammed Munir Basha, aged 54 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.A.D.Jagdish Chandira, 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.46, 84, 87 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.46, 84, 87 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ap
To

- 1.The Secretary to Government
Home, Prohibition & Excise Department
Fort St George, Chenna 600 009.
- 2.The Commissioner of Police
Chennai Police, O/o.the commissioner of
Police [Goondas section], Vepery
Chennai 600 007.
3. The Superintendent Central Prison,
Puzhal, Chennai
4. The Joint Secretary to Government
Public Law and Order Fort St.George,
Chennai-9
- 5.The Public Prosecutor,
High Court, Madras.

+1 cc to M/S.A.D.Jagdish Chandra, Advocate sr.2113

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