

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No. 3150 of 2015

Mariammal

... Petitioner/Wife
of the Detenu

Vs

The State represented by its

1. The Secretary to Government (Home)
Prohibition and Excise Department
Government of Tamilnadu
Fort St.George
Chennai-600 009.

2. The Commissioner of Police
Chennai City
Chennai.

.... 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 leading to the detention of the petitioner's husband, namely, Ganesan @ Ganesamurthy, S/o.Mariyappan, Male, aged 34 years, presently detained in Central Prison, Puzhal, Chennai, under Act 14 of 1982, as an 'Goonda' vide the detention order dated 05.11.2015, on the file of the 2nd respondent, made in BCDFGISSSV No.1169/2015, and quash the same and consequently, to direct the respondents to produce the body and the person of the detenu, before this Court and thereafter, to set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.S.Manoharan

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

ORDER

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

This Habeas Corpus Petition has been filed, by the wife of the detenu, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records in BCDFGISSSV No.1169/2015, dated 05.11.2015, passed by the 2nd Respondent, detaining the detenu, namely, Ganesan @ Ganesamurthy, S/o.Mariyappan, Male, aged 34 years, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), branding him as a "Goonda", in the Central Prison, Puzhal, Chennai, and to quash the same and to direct the respondents to produce the body of the detenu and to set him at liberty, forthwith.

2. We have heard, Mr.S.Manoharan, the learned counsel appearing on behalf of the petitioner; Mr.A.N.Thambidurai, the learned Additional Public Prosecutor appearing on behalf of the State; and we have also perused the records, carefully.

3. Though, a number of grounds had been raised by the petitioner, while challenging the impugned order of detention, dated 05.11.2015, the learned counsel, appearing on behalf of the petitioner, had submitted that, page Nos.423, 425, 427 to 429 of the booklet supplied to the detenu, contain the copy of the documents relating to the statement of some of the witnesses recorded under Section 161 Cr.P.C., in respect of the ground case in S-5 Pallavaram Police Station Crime No.2223 of 2015, which are totally illegible, and could not be read at all. The illegible copies would deprive the detenu from making an effective representation to the authorities concerned against the order of detention. Thus, the detention order is vitiated on this ground and the same is liable to be quashed.

4. The said submission made by the learned counsel appearing on behalf of the petitioner, had not been refuted by the learned Additional Public Prosecutor.

5. It is noted that page Nos.423, 425, 427 to 429 of the booklet supplied to the detenu, contain the copy of the documents relating to the statement of some of the witnesses recorded under Section 161 Cr.P.C., in respect of the ground case in S-5 Pallavaram Police Station Crime No.2223 of 2015, which are totally illegible, and unreadable. This has resulted in the detenu being deprived of making an effective representation. In such circumstances, we find that there is

non-application of mind on the part of the detaining authority, in passing the detention order. Therefore, we are inclined to set aside the impugned detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 05.11.2015, 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 IV)

//True Copy//

Sub Assistant Registrar

paa

To

1. The Secretary to Government (Home)
Prohibition and Excise Department
Government of Tamilnadu
Fort St.George
Chennai-600 009.

2. The Commissioner of Police
Chennai City
Chennai.

3. The Superintendent
Central Prison,
Puzhal, Chennai.

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

5. The Additional Public Prosecutor,
High Court, Madras.

SR(CO)
CA(06/05/2016)

H.C.P.No.3150 of 2015

WEB COPY