

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2016

CORAM

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

H.C.P.No.3161/2015

S.Jayakodi

..... Petitioner

Vs

1.The State of Tamil Nadu,
rep.by its Secretary to Government (Home)
Prohibition & Excise Department,
Secretariat, Chennai-9

2.The District Collector-cum-District Magistrate,
Tiruppur District, Tiruppur. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the entire records relating to the impugned order of detention passed by the 2nd respondent in CrI.M.P.No.13/Goonda/2015, dated 05.08.2015 and set aside the same and consequently direct the respondent to produce the detenu Kali @ Kalimuthu @ Vellai Kalimuthu, son of Shanmugavel Thevar, petitioner's son who is now confined at Central Prison, Coimbatore, before this court and set him at liberty forthwith.

For Petitioner : Ms.R.Saritha

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 mother of the detenu, namely, Kali @ Kalimuthu @ Vellai Kalimuthu, aged about 27 years, son of Shanmugavel Thevar, praying that this Court may be pleased to issue a Writ of Habeas Corpus, to call for the records, in CrI.M.P.No.13/Goonda/2015, dated 05.08.2015, passed by the 2nd Respondent, detaining the detenu,

under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", in the Central Prison, Coimbatore, 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. Though, many grounds have been raised in the petition, Ms.R.Saritha, the learned counsel appearing for the petitioner, confines her 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.18 and 21 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.18 and 21, 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 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.

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 CrI.M.P.No.13/Goonda/2015, dated 05.08.2015, 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-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government (Home)
Prohibition & Excise Department,
Secretariat, Chennai-9
- 2.The District Collector-cum-District Magistrate,
Tiruppur District, Tiruppur.
- 3.The Superintendent of Police,
Central Prison, Coimbatore.
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai 9.
- 5.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.R.Saritha, Advocate, sr.26143

H.C.P.No.3161/2015

rsy co
kra 25.05.2016