

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2016

CORAM:

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

H.C.P.No.3226 of 2015

Tameemmunisa

... Petitioner

-Vs-

1.State of Tamil Nadu
Rep. by its Secretary to Govt.,
Home, Prohibition and Excise Department
Secretariat,
Chennai 600 009.

2.The Commissioner of Police
Chennai Police
Vepery, Chennai 600 007.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the entire records relating to petitioner's son detained under Tamil Nadu Act 14 of 1982 vide detention order, dated 27.07.2015 on the file of the second respondent herein made in proceedings BCDFGISSSV No.609/2015 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner's son namely Rafique, S/o Dawood Basha, aged 23 years before this Court and set the petitioner's son at liberty from detention, now petitioner's son detained at Central Prison - II, Puzhal, Chennai 600 066.

For Petitioner : Mr.C.C.Chellappan

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

O R D E R

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

This Habeas Corpus Petition has been filed by the mother of the detenu, namely, Rafique, S/o Dawood Basha, aged about 23 years to issue a Writ of Habeas Corpus, calling for the records

relating to the impugned order passed by the 2nd respondent in BCDFGISSSV No.609/2015 dated 27.07.2015, detaining him under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), branding him as a "Goonda" as contemplated u/s 2 (f) of the Tamil Nadu Act 14 of 1982, and to quash the same, produce him before this Court and to set him at liberty.

2. Though many grounds have been raised in the petition, Mr.C.C.Chellappan, 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 Detaining Authority has relied upon a similar case registered by Madhavaram Police Station in Cr.No.1505/2013 wherein bail was granted to the accused by the learned Principal Sessions Judge, Thiruvallur in CrI.MP.No.2272/2013. But, the said bail order has not been furnished to the detenu. This non-furnishing of the important document has deprived the detenu from making an effective representation. This has not been duly verified by the Detaining Authority before passing the order of detention. Therefore, it is submitted that this is indicative of total non-application of mind on the part of the detaining authority and the same vitiates the detention order and is unsustainable in law.

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. When the similar case document relied upon was not available before the detaining authority, it is not known as to how the detaining authority had come to the subjective satisfaction by making reference about the said non-existent document. Hence, the detention order is liable to be set aside.

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

8. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the 2nd 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 III)

//True Copy//

Sub Assistant Registrar

gms

To

- 1.The Secretary to Govt.,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police
Chennai Police
Vepery, Chennai 600 007.
- 3.The Superintendent,
Central Prison,
Puzhal II, Chennai 66.
- 4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 5.The Public Prosecutor,
Madras High Court, Chennai.

सत्यमेव जयते

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KS(CO)
CA(27/05/2016)

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