

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2016

CORAM

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

H.C.P.No.1086 of 2016

Thirupathi

... Petitioner

Vs

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

2. The Commissioner of Police,
Salem City,
Salem District.

... 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 pertaining to the order of detention passed by the second respondent in C.M.P.No.22/Goonda/Salem city/2016, dated 6.4.2016, against the detenu, namely Vinoth @ Vinothkumar, son of Thirupathy, aged about 24 years, who is confined at the Central Prison, Salem, Salem District and to set aside the same and consequently, to direct the respondents to produce the body and person of the detenu before this court and set him at liberty, forthwith.

For Petitioner : Mr.K.Kalaikovan

For Respondents : Mr.V.M.R.Rajentran,
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.BASKARAN, J.]

This Habeas Corpus Petition has been filed by the father of the detenu, namely, Vinoth @ Vinothkumar, aged about 24 years, son of Thirupathy, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.22/Goonda/Salem city/2016,

dated 6.4.2016, passed by the second 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 of 1982), branding him as a "Goonda", in the Central Prison, Salem, and to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty, forthwith.

2. We have heard the learned counsel appearing on behalf of the petitioner, as well as the learned Additional Public Prosecutor appearing for the State and we have also perused the records, carefully.

3. The learned counsel appearing for the petitioner contends that in the copy of the remand order, relating to the Crime No.56 of 2016, on the file of the Sooramangalam Police Station, furnished to the detenu, the vernacular version, as found in page No.94 of the booklet, was not properly translated. According to the learned counsel for the petitioner, in the English version of the remand order, found in page No.93 of the booklet, it had been mentioned that the grounds of remand and the rights were explained to the accused. But, on verification of the vernacular version, the same is found missing. Thus, this has prevented the detenu from making an effective representation against the impugned order of detention. Thus, the detention order is vitiated and the same is liable to be quashed.

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

5. It is noted from the records available that in page No.93 of the booklet furnished to the detenu, in the English version of the remand order, dated 13.2.2016, it has been stated as follows:

"Accused produced at 1.45 AM. No complaint against police. Records perused. Grounds mentioned in the check list are all reasonable. Hence it is satisfied that grounds for arrest exists as per Sec.41 Cr.PC. Grounds of remand and rights explained to accused"

However, in the vernacular version found in page No.94, there is no translation regarding the legal assistance that was explained to the detenu. Thus, it is apparent that the detenu was not informed about the valid statutory right of legal assistance available to him. Therefore, this has caused substantial

prejudice to the detenu and it has prevented him from making an effective representation against the order of detention. In such circumstances, we are inclined to set aside the detention order.

6. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 06.04.2016, 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 VI)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary to Government,
The State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The Commissioner of Police,
Salem City,
Salem District.
3. The Superintendent,
Central Prison, Salem.
(In duplicate for communication to detenu)
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

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H.C.P.No.1086 of 2016

KGK(CO)
CA(16/12/2016)