

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.118 of 2016

Deepa

.. Petitioner

vs.

1.The State rep. By its
Secretary to Government,
Home, Prohibition and Excise
Department, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Salem.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to produce the body of the detenu, namely, Siva @ Sivakumar, son of Manickam, aged about 30 years before this Court and set him at liberty forthwith, by calling for the records pertaining to the detention order in C.M.P.No.88/Goonda/SALEM CITY/2015 dated 07.12.2015 passed by the 2nd respondent, quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.R.Ezhilarasan

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

ORDER

[Order of the Court was made by V.BHARATHIDASAN, J.]

The petitioner, who is the wife of the detenu Thiru Siva @ Sivakumar, son of Manickam, aged about 30 years, has come forward with this petition challenging the detention order passed by the second respondent in C.M.P.No.88/Goonda/SALEM CITY/2015, dated 07.12.2015, against her husband branding him as a "Goonda" under

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].

2. Though, many grounds have been raised in the petition, Mr. R. Ezhilarasan, 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, several pages, more particularly, page Nos. 71 and 72 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. 71 and 72, 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. सत्यमेव जयते

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 C.M.P.No.88/Goonda/SALEM CITY/2015 dated 07.12.2015 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/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

- 1.Secretary to Government,
Home, Prohibition and Excise
Department, Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Police,
Salem.
3. The Superintendent
Central Prison,
Salem
4. The Joint Secretary to Government
Public (Law and order) Fort Saint George,
Chennai
- 5.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.R. Ezhilarasan, Advocate, Sr. 29683

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