

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.05.2016

CORAM

**THE HON'BLE MR.JUSTICE G.CHOCKALINGAM
and
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN**

H.C.P.No. 16 of 2016

S.Nesamani

.. Petitioner

Vs.

1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.

2.The District Magistrate and
District Collector
Namakkal District

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records in connection with the order of Detention passed by the second respondent dated 30.11.2015 in C.M.P.No.72/Goonda/2015/M1 against the petitioner son CPT@ Rajkumar, male aged 36 years S/o. Periyasamy, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.M.Maharaja
Addl. Public Prosecutor

ORDER

[Order of the Court was made by **G.CHOCKALINGAM, J.**]

The petitioner, who is the sister of the detenu, CPT @ RAJKUMAR, Son of Periyasamy, aged about 36 years, has come forward with this petition challenging the detention order passed by the 2nd respondent dated 30.11.2015 against his brother branding him as a "GOONDA" under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual 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.C.Prakasam, 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. The learned counsel for the petitioner mainly focused his arguments on the ground of non-furnishing of certain documents viz., pages 40,81 to 87 of the Booklet in vernacular version. This has deprived the detenu in making effective representation to the authorities concerned and therefore, on this sole ground, the detention order 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 careful scrutiny of the Booklet furnished to us, would reveal that some of the documents viz., pages 40, 81 to 87 were furnished to the detenu only in English version and not in vernacular version. 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 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.

[G.C.,J.] [M.V.M.,J.]
24.05.2016

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To

- 1.The Secretary to Government
The State of Tamil Nadu,
Home, Prohibition and Excise Department
Fort St.George, Chennai 600 009.
- 2.The District Magistrate and
District Collector
Namakkal District
- 3.The Additional Public Prosecutor
High Court, Madras.
- 4.The Superintendent of Police,
Central Prison, Puzhal, Chennai.

**G.CHOCKALINGAM, J.
AND
M.V.MURALIDARAN, J.**

kua/ga

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