

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2016

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

H.C.P.No.33 of 2016

Elakkiya

... Petitioner

v.

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

2. The Commissioner of Police
Chennai Police, Chennai.

... 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 2nd respondent dated 15.12.2015 in BCDFGISSSV No.1245/2015 against the brother of the petitioner, Detenu Sathish M/A 24, S/o. Kannan, who is confined at Central Prison, Puzhal, Chennai and to set aside the same and consequently direct the respondents to produce the detenu before this court and set him at liberty.

For Petitioner : Mr.K.S.Kaviarasu

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

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O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

This Habeas Corpus Petition has been filed by the father of the detenu, namely, Sathish, S/o. Kannan, aged about 24 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.1245/2015 dated 15.12.2015, 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.K.S.Kaviarasu, 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 R-3 Ashok Nagar Police Station in Cr.No.2248/2015 wherein bail was granted to the accused by the learned Principal Sessions Judge, Chennai in CrI.MP.No.9921/2015. 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.

gms

s/d-

Assistant Registrar(CS-VI) /
Vacation Officer.

True Copy

Sub-Assistant Registrar

To

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

rsy(co)
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H.C.P.No.33 of 2016

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