

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.38 of 2016

Lavanya

... Petitioner

v.

1. State of Tamil Nadu,
Rep. By Secretary Home,
Prohibition and Excise Department
Fort St. George
Chennai - 600 009.

2. The Commissioner of Police
The Commssoner Office
Vepery, Chennai - 600 007.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the detention order in Memo No.1225/BCDFGISSSV/2015, dated 30.11.2015 passed by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Sathish Kumar, S/o.Raji aged about 32 years the detenu, now confined in Central Prison, Puzhal, Chennai before the court and set the petitioner's husband Sathish Kumar, S/o.Raji aged about 32 years, the detenu herein at liberty.

For Petitioner : Mr.R.Gowri Shankar

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

ORDER

[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 Kumar, S/o.Raji, aged about 32 years to issue a Writ of Habeas Corpus, calling for the records relating to the impugned order passed by the 2nd respondent in Memo No.1225/BCDFGISSSV/2015, dated 30.11.2015, 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. R. Gowri Shankar, 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 K-8 Arumbakkam Police Station in Cr.No.952/2015 wherein bail was granted to the accused by the learned Principal Sessions Judge, Chennai in CrI.MP.No.17025/2015. 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.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

gms

To

1. The Secretary Home,
Prohibition and Excise Department
Fort St. George
Chennai - 600 009.
2. The Commissioner of Police
The Commssoner Office
Vepery, Chennai - 600 007.
3. The Public Prosecutor,
Madras High Court, Chennai.
4. The Superintendent, Central Prison,
Puzhal, Chenani-66.
5. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai. 600 009.

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KSJ(CO)
EU(30/05/2016)