

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.05.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

H.C.P.No.412 of 2016

J.Sivakamisundari .. Petitioner

vs.

1.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police
(Goonds Section),
Vepery, Chennai-600 007.

2. The Principal Secretary to Government,
Home, Prohibition and Excise (XV) Department,
Fort St. George,
Chennai - 600 009. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records from the first respondent in BCDFGISSSV No.107/2016 dated 15.02.2016 by setting aside the said order of detention passed by the first respondent and setting the detenu Jothi @ Arul Jothi, aged 33 years, S/o.Sivasubramaniam at liberty, now detained in the Central Prison, Puzhal at Chennai.

For Petitioner : Mr.M.Devaraj

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

ORDER

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

The petitioner, who is the wife of the detenu Jothi @ Aruljothi, son of Sivasubramaniam, aged about 33 years, has come forward with this petition challenging the detention order passed by the first respondent, dated 15.02.2016, 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, 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, page Nos.321, 323 and 327 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.321, 323 and 327, 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.

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 BCDFGISSSV No.107/2016 dated 15.02.2016 passed by the first respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Vacation Officer.

/true copy/

Sub Asst. Registrar.

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To

- 1.The Commissioner of Police,
Greater Chennai Police,
Office of the Commissioner of Police
(Goonds Section),
Vepery, Chennai-600 007.
2. The Principal Secretary to Government,
Home, Prohibition and Excise (XV) Department,
Fort St. George, Chennai - 600 009.

3. The Superintendent,
Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

5. The Joint Secretary to Government,
Public [Law & Order] Department,
Fort St. George, Chennai 9.

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