

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.05.2016

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

H.C.P.No.67 of 2016

Parvathi

.. Petitioner

vs.

1. The Commissioner of Police
Office of the Commissioner of Police
Egmore, Chennai.

2. The Secretary,
Government of Tamil Nadu
Home, Prohibition and Excise Department
Chief Secretariat, Fort St.George,
Chennai - 600 009

3. The Superintendent
Central Prison,
Puzhal, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records pertaining to the order of detention passed by the first respondent herein and made in No.1199/B.C.D.F.G.I.S.S.V./2015 dated 24.11.2015 and to set aside the same and directing the third respondent to produce the detenu namely Viz.Petitioner's my son Tr.Shankar, S/o. Ravi, now confined in Central Prison, Puzhal, Chennai before this Court and thereby setting him at liberty.

For Petitioner : Mr.T.S.Srinivasan

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

O R D E R

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

Challenge is made to the order of detention passed by the first respondent vide Proceedings in 1199 of 2015 dated

24.11.2015, whereby the detenu, namely, Shankar, S/o. Ravi, aged about 30 years, was ordered to be detained under the provisions of 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) branding him as a "Goonda".

2. Though the learned counsel for the petitioner has raised several other grounds to assail the order of detention, he mainly focused his arguments on the ground that non application of mind on the part of the detaining authority.

3. Learned counsel for the petitioner submits that the detention order was passed on 14.11.2015, but, in the documents supplied at page No.15, the jail authorities memo is dated 27.11.2015, wherein it is stated that the detenu was produced in the court on 26.11.2015 and on that date his remand period was extended, thereby amounting to non application of mind on the part of the detaining authority and, therefore, on this sole ground, the detention order is liable to be quashed.

4. We have heard the learned Additional Public Prosecutor on the above submission made by the learned counsel for the petitioner.

5. A perusal of the detention order passed by the detaining authority would show that the same was passed on 27.11.2015. As evidenced from the booklet, in particular, page No.15, i.e. the memo of the jail authorities dated 27.11.2015, it is seen that the detenu was produced in the Court on 26.11.2015 and on that date his remand was extended. Therefore, it is clear that the documents would not have come into existence on the date of passing the detention order, which would vitiate the order of detention.

6. 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.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order 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 (CS-VI)

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Sub Assistant Registrar

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To

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

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