

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P.No.2354 of 2016

K.Shankar @ Kakka Shankar

... Petitioner

Vs.

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

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus to call for the records relating to the detention order in Memo No.697/BCDFGISSSV/2016 dated 13.07.2016 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner/detenu Shankar @ Kakka Shankar, S/o Kuppusamy, aged about 37 years, now confined in Central Prison, Puzhal, Chennai before this Court and set detenu herein at liberty.

For Petitioner : Mr.P.Kumaravel

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

WEB COPY

ORDER

[Order of the Court was made by S.NAGAMUTHU, J.]

The petitioner/detenu Shankar @ Kakka Shankar, S/o Kuppusamy, aged about 37 years, has come forward with this Writ of Habeas Corpus Petition challenging the detention order passed by the second respondent, dated 13.07.2016, against him 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, Mr. P. Kumaravel, 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 copies of List of property sent to Magistrate (in Tamil), copy of F.I.R. in Crime No. 981 of 2013 on the file of B-2 Esplanade Police Station, and certain other papers in typed set in pages 41, 69, 81, 88, 102 and 109, furnished to the detenu, found in the booklet, were illegible and could not be read at all. These 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 this ground the impugned 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 the petitioner and the learned Additional Public Prosecutor appearing for the respondents and we have also perused the records carefully.

6. A perusal of the booklet supplied to the detenu, would show that the copy of documents referred and relied upon and referred to by the Detaining Authority, the copies of List of property sent to Magistrate (in Tamil), copy of F.I.R. in Crime No. 981 of 2013 on the file of B-2 Esplanade Police Station, and certain other papers in typed set in pages 41, 69, 81, 88, 102 and 109 were totally unreadable. This has resulted 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 Memo No.697/BCDFGISSSV/2016 dated 13.07.2016 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.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jbm/sts

To

1. The Secretary,
Home, Prohibition and Excise(XVI) Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Police,
Office of Commissioner of Police,
Vepery, Chennai- 600 007.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Kumaravel, Advocate, S.R.No.26240

H.C.P.No.2354 of 2016

CP(CO)
CA(30/05/2017)