

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

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

H.C.P.No.2417 of 2016

Kasthuri

... Petitioner

Vs.

1. The Commissioner of Police,
Office of Commissioner of Police,
Vepery, Chennai- 600 007.
2. State of Tamil Nadu,
Rep. By the Secretary, Home,
Prohibition and Excise(XVI) Department,
Fort St. George, Chennai - 600 009.
3. The Superintendent,
Central Prison,
Puzhal, Chennai

... 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.1028/BCDFGISSSV/2016 dated 03.09.2016 passed by the first respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Sudhakar, S/o Sundaram, aged about 24 years, now confined in Central Prison, Puzhal, Chennai before this Court and set detenu herein at liberty.

For Petitioner : Mr.T.S.Srinivasan

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

ORDER

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

The petitioner, who is the mother of the detenu Sudhakar, S/o Sundaram, aged about 24 years, has come forward with this Writ of Habeas Corpus Petition challenging the detention order

in Memo No.1028/BCDFGISSSV/2016 passed by the first respondent, dated 03.09.2016, against the petitioner's son 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.T.S.Srinivasan, 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, a copy of the F.I.R filed in respect of Crime No.1771/2015 on the file of S-10 Pallikaranai Police Station and some of the additional typed set of papers in the booklet - Pages 22 & 23, furnished to the detenu, 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 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, a copy of the F.I.R filed in respect of Crime No.1771/2015 on the file of S-10 Pallikaranai Police Station and some of the additional typed set of papers in the booklet - Pages 22 & 23, 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.1028/BCDFGISSSV/2016 dated 03.09.2016 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/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jbm/sts

To

1. The Commissioner of Police,
Office of Commissioner of Police,
Vepery, Chennai- 600 007.
2. The Secretary,
Home, Prohibition and Excise(XVI) Department,
Fort St. George,
Chennai - 600 009.
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.

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