

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.2704 of 2016

Munuswamy

.. Petitioner

Vs.

1. State of Tamil Nadu,
Rep. By the Secretary, Home,
Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2. The District Collector &
District Magistrate,
Vellore District,
Vellore 09.

.. 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 C3.D.O.No.63/2016 dated 23.09.2016 passed by the second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's son Magi @ Magesh, S/o Munusamy, aged about 30 years, now confined in Central Prison, Vellore before this Court and set detenu herein at liberty.

For Petitioner : Mr.V.Paarthiban

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 father of the detenu Magi @ Magesh, S/o Munusamy, aged about 30 years, has come forward with this Writ of Habeas Corpus Petition challenging the detention order passed by the second respondent, dated 23.09.2016, against

his 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.V.Paarthiban, 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 Remand Order (both in English and Tamil) in Crime No.453/2016, on the file of Arakkonam Town Police Station containing pages 146 & 147, 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 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 Remand Order (both in English and Tamil) in Crime No.453/2016, on the file of Arakkonam Town Police Station containing pages 146 & 147, 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 C3.D.O.No.63/2016 dated 23.09.2016 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/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

jbm/gsa

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector &
District Magistrate,
Vellore District,
Vellore 09.
3. The Superintendent of Central Prison,
Vellore.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St George, Chennai-9
5. The Public Prosecutor,
High Court, Madras.

Order in
H.C.P.No.2704 of 2016

KK(CO)
CS/31/05/17