

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.05.2017

CORAM

**THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN
and**

THE HONOURABLE MR.JUSTICE S.BASKARAN

H.C.P No.268 of 2017

Gomathi

.. Petitioner

Vs

1. State of Tamilnadu,
Rep. By The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 30.01.2017 in Memo No.38/BDFGISSSV/2017 against the petitioner's husband, Harish @ Harishbabu, S/o.Dayalan, who is confined at Central Prison, Puzhal, Chennai, and to set aside the same and consequently direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Gopi Krishnan
For respondents : Mr.V.M.R. Rajentren,
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by **M.V.Muralidaran, J.,**)

The petitioner, who is the wife of the detenu Harish @ Harishbabu, has come up with this habeas corpus petition, challenging the detention order passed against her husband by the second respondent, vide proceedings No.38/BDFGISSSV/2017 dated 30.01.2017.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3.Learned counsel appearing for the petitioner submitted that, the copies of documents furnished to the detenu in booklet page Nos.227 and 229, are 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.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, which are enclosed in booklet page Nos.227 and 229 are 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.

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.

M.V.MURALIDARAN, J.
and
S.BASKARAN,J.

(sra)

7.Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 30.01.2017, 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.

(M.V.M..J.,) (S.B.J.,)
12-05-2017

Speaking Order/ Non-Speaking Order

Index : Yes/no

Internet : Yes/no

sra

To

1. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai – 600 009
2. The Commissioner of Police,
Greater Chennai, The Commissioner Office,
Vepery, Chennai 600 007.
3. The Public Prosecutor, High Court, Chennai.

H.C.P.No.268 of 2017