

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.07.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

AND

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO. 504 OF 2018

S.Thaslim Begum

.. Petitioner

- Vs -

1. The Commissioner of Police
Greater Chennai, Chennai Police
No.132, Commissioner Office Building
EVK Sampath Road,
Vepery, Periyamet
Chennai 600 007.
 2. The Government of Tamil Nadu
rep. By the Addl. Chief Secretary to Govt.
Home, Prohibition & Excise Dept.
Secretariat
Chennai 600 009.
 3. The Superintendent of Central Prison
Puzhal, Chennai.
- ... Respondents

Petition filed for the issuance of a writ of habeas corpus calling for the records relating to the impugned order in No.BCDFGISSSV 98/2018 dated 20.02.2018 on the file of the 1st respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Shaik Dawood @ Shaik, S/o Hussain, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr. M.abdul Nazeer

For Respondents: Mr. R.Prathap Kumar, APP

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The 1st respondent, clamped an order of detention on 20.02.2018 on Shaik Dawood @ Shaik, S/o Hussain, as the said authority arrived at the subjective satisfaction that the said detenu is a 'Video Pirate' and he has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to preventing him from acting prejudicial to the interest of

public health and public order.

2. Challenging the order of detention, the petitioner has come forward with the present habeas corpus petition.

3. It is contended by the learned counsel for the petitioner that though the detaining authority has expressed subjective satisfaction by placing reliance upon pages 84 to 87 of the typed set of documents, however, the said documents are illegible and, therefore, furnishing of illegible copies has prevented the detenu from making an effective representation. It is the further contention of the learned counsel that apart from the above, the detaining authority has relied upon an order dated 10.7.2015 wherein bail has been granted in respect of an offence committed u/s 52(A), 68(A), 51 r/w 63 & 65 of Copyright Act, 1957 and 292 (2) (a) IPC registered in Crime No.253/2015 by the Central Crime Branch, Video Piracy Cell. It is the submission of the learned counsel that the said order has been passed three years prior to the detention and no recent order has been relied upon to arrive at the subjective satisfaction. Therefore, it is contended that the above reasoning clearly shows non application of mind on the part of the detaining authority and the non-application of mind renders the detention illegal and, therefore, it is liable to be quashed.

4. This Court heard the learned Addl. Public Prosecutor on the above contentions.

5. A perusal of the records, particularly pages 84 to 87 of the typed set of documents, which is relied upon by the detaining authority to arrive at the subjective satisfaction for detaining the detenu reveal that the said documents are illegible and are not in a readable condition. Furnishing of legible copies of the documents relied upon by the detaining authority is mandatory for enabling the detenu to make an effective representation. The fact that illegible copies of documents, which have been relied on by the detaining authority, being furnished to the detenu, the detenu has been deprived of his valuable right to file an effective representation.

6. On this short ground itself the order of detention is liable to be quashed. However, coupled with the above furnishing of illegible documents, relied on by the detaining authority, which vitiates the order of detention, the reliance placed on an order granting bail, which order has been passed three years prior to the present detention also vitiates the order of detention. In the march of law, bail is decided on the basis of facts and circumstances of each and every case and reliance on grant of bail, that too, three years prior to the detention, clearly exposes non-application of mind on the part of the detaining authority while arriving at the subjective

satisfaction. Therefore, this Court is of the considered view that the order of detention is liable to be quashed.

7. On the above grounds, the order of detention is quashed. The habeas corpus petition is allowed. The detenu, Shaik Dawood @ Shaik, S/o Hussain, is ordered to be set at liberty forthwith, unless his custody is otherwise required in any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Commissioner of Police
Greater Chennai, Chennai Police
No.132, Commissioner Office Building
EVK Sampath Road, Vepery
Periyamet, Chennai 600 007.
2. The Addl. Chief Secretary to Govt.
Government of Tamil Nadu
Home, Prohibition & Excise Dept.
Secretariat, Chennai 600 009.
3. The Superintendent of Central Prison
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai -9.
5. The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.M.Abdul Nazeer, Advocate, S.R.No.51194

RGN (CO)

rrs 19/09/2018

H.C.P. NO. 504 OF 2018