

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No.1663 of 2019

Kumari ..Petitioner/Mother of the Detenue
vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police
(Goondas Section),
Vepery, Chennai 600 007. Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention dated 20.06.2019 passed by the second respondent in No.BCDFGISSSV/336/2019, and quash the same and direct the Respondents to produce the body and person of the Petitioner's son namely, Surya, son of Muthu, aged about 24 years, detained in Central Prison, Puzhal, Chennai, before this Court.

For Petitioner : Mr.B.M.Santharam
For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

ORDER

[Order of the Court as made by M.M.SUNDRESH, J.]

The petitioner is the mother of Surya, male, aged 24 years, S/o.Muthu, who is the detenu. The detenu has been detained by the second respondent by his order in No.BCDFGISSSV/336/2019, dated 20.06.2019, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the Petitioner and the learned Additional Public Prosecutor appearing for the Respondents. We have also perused the records produced by the Detaining Authority.

3. Though many grounds have been raised in the petition, learned counsel 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. According to the learned counsel for the petitioner, the sponsoring authority has stated in the Arrest Memo at page No.425 of the Booklet furnished to the detenu, that the arrest of the detenu has been intimated to his family members. However, there is no material to substantiate the service of arrest intimation stated to have been made to the family members of the detenu. Therefore, it is stated that the detenu was deprived of making an effective representation in the absence of furnishing of full particulars by the Detaining Authority. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind.

4. Per contra, the learned Additional Public Prosecutor submitted that the arrest of the detenu has been intimated to the family members of the detenu through SMS. However, we find that there are no material particulars to substantiate the same. This Court has also taken a similar view in such cases that the detention order cannot be sustained.

5. As evidenced from the document at page No.425 of the Booklet furnished to us, a mere endorsement is made by the authorities to the effect that the arrest intimation has been informed to the family members of the detenu through SMS, but, no materials have been furnished to substantiate that the said intimation was sent through Tapal or Registered post or as per the procedure laid down. Therefore, non-furnishing of details given to the relatives of the detenu would amount to deprivation of the right of the detenu to make an effective representation and the same would vitiate the order of detention, and the same cannot be sustained in the eye of law.

6. It is a trite law that, personal liberty protected under Article 21 of the Constitution of India 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 preventive detention law is illegal. The impugned detention order, is therefore, liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Memo No.BCDFGISSSV/336/2019 dated 20.06.2019, passed by the second respondent is set aside. The detenu, namely, Surya, S/o.Muthu, aged about 24 years is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

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

AKM/04.12.19/3P-6C /

सत्यमेव जयते

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