



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.01.2015

Coram

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

H.C.P. (MD) No.1074 of 2014

Rathinam

.. Petitioner

Vs.

1.State rep.by,

The Secretary to Government, (Home)
Prohibition & Excise Department,
State of Tamilnadu,
Secretariat, Chennai - 9.

2.The District Collector & District Magistrate,
Tiruchirapalli District,
Tiruchirapalli.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for entire records connected with the detention order dated 02.06.2014 passed by the 2nd respondent in Cr.M.P.No.20 of 2014 and set aside the same and produce the detenu by name Gunasekaran S/o.Ponnambalam, now detained in Central Prison, Tiruchirapalli before this Court and set him at liberty.

For Petitioner : Mr.Siddarthan

For Respondents : Mr.C.Mayilvahana Rajendran
Addl.Public Prosecutor

ORDER

(Order of the Court was made by **A.SELVAM, J.**)

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to call for records relating to the detention order passed in Cr.M.P.No.20 of 2014 dated 02.06.2014 by the detaining authority who has been arrayed as second respondent herein against the detenu by name Gunasekaran S/o.Ponnambalam and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, Jeeyapuram Circle, Tiruchirapalli as sponsoring authority has submitted an affidavit to the detaining authority, wherein it is stated that a 'girl missing' case has been registered against the detenu in Crime No.29 of 2012 and subsequently



altered into Sections 302, 376, 379 and 201 of the Indian Penal and he has been arrested and remanded to custody and periodically extension of remand has been given. Under the said circumstances, he requested the detaining authority to invoke Act 14 of 1982 against the detenu.

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3. The detaining authority viz., second respondent herein after perusing the averments made in the affidavit and other connected documents has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as 'goonda' by way of passing the impugned detention order and in order to quash the same, the present Habeas Corpus Petition has been filed by the mother of the detenu as petitioner.

4. On the side of the respondents a detailed counter has been filed, wherein it has been contended to the effect that all the averments made in the petition are false and ultimately prayed to dismiss the same.

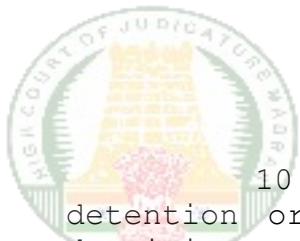
5. The learned counsel appearing for the petitioner has contended that except in Crime No.29 of 2012, the detenu has not been shown in any other crime numbers. Under the said circumstances, the detaining authority has erroneously derived subjective satisfaction to the effect that the detenu is a 'habitual offender' and therefore as per Section 2(f) of Act 14 of 1982, the entire detention order passed by the detaining authority is liable to be quashed.

6. Per contra, the learned Additional Public Prosecutor has contended that the detaining authority after considering gravity of offence alleged to have been committed by the detenu has rightly invoked Act 14 of 1982 by way of passing the impugned detention order and therefore, the same does not call for any interference.

7. It is seen from the records that except in Crime No.29 of 2012 originally registered as 'girl missing' and subsequently altered into Sections 302, 376, 379 and 201 of the Indian Penal Code, no case is pending against the detenu.

8. The learned Additional Public Prosecutor has relied upon the recent amendment made by the State Government to Section 2(f) of Act 14 of 1982, wherein the word 'habitually' has been deleted. But the notification has come into effect only on 13.10.2014. The impugned order of detention has been passed on 02.06.2014. Since the notification issued by the State Government is not having retrospective effect, the same is not applicable to the facts of the present case.

9. It is an admitted fact that in Section 2(f) of Act 14 of 1982 the word 'habitually' is mentioned. But in the instant case, as pointed out earlier, except the case registered in crime No.29 of 2012, no case has been pending against the detenu. Therefore, it goes without saying that the detaining authority without applying his mind properly has erroneously found the detenu as 'habitual offender' and passed the impugned detention order. On that ground alone, the impugned detention order is liable to be quashed.



10. In fine, this Habeas Corpus Petition is allowed and the detention order dated 02.06.2014 passed in Cr.M.P.No.20 of 2014 by the detaining authority/second respondent herein is quashed and the detenu by name Gunasekaran is ordered to be set at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(C.S.)

To

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
State of Tamilnadu,
Secretariat, Chennai - 9.
- 2.The District Collector & District Magistrate,
Tiruchirapalli District,
Tiruchirapalli.
4. The Superintendent of Central Prison, Trichy
(in duplicate to communicate to the detenu)
4. The Joint Secretary to Government,
Public (Law & Order) Fort St.Geroge, Chennai 600 009.
- 5.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. V.K.Rajendthran, Advocate in SR.No. 3130

TS/29.01.2015/2P-8C

H.C.P. (MD) No.1074 of 2014

22.01.2015