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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

HABEAS CORPUS PETITION(MD)No.1093 of 2014

Seethai

..Petitioner

Vs.

1.The District Collector and
District Magistrate,
Ramanathapuram District,
Ramanathapuram.

2.State of Tamil Nadu,
Rep. By the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai.

3.The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District,
Ramanathapuram.

..Respondents

Prayer:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus praying to call for records in Order No.22/Goonda/2014, dated 30.06.2014 and direct the respondents herein to produce Babu @ Sathya Babu, Son of Chelladurai, aged 24 years herein who has been termed as 'Goonda' and now confined in Central Prison, Madurai and set aside the same and set the detenu at liberty and pass such further or other orders.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.A.Ramar,

1 to 3 Additional 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 detention order passed in Order No.22/Goonda/2014, dated 30.06.2014 by the detaining authority, who has been arrayed as first respondent herein against the detenu by name Babu @ Sathya Babu, Son of Chelladurai and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, Kenikkarai Police Station, Ramanathapuram District as sponsoring authority has submitted an affidavit to the detaining authority, wherein it is stated that the detenu has involved in the following adverse cases:

<https://hcservices.ecourts.gov.in/hcservices/cases> Case No.889 of 2013 Melapalayam Police Station registered under Sections 294(b), 323, 307 and 34 of the Indian Penal Code.



(ii) Crime No.595 of 2013 Thatchanallur Police Station registered under Sections 302 altered into Sections 147, 148, 341, 302, 109 and 120(b) of the Indian Penal Code.

(iii) Crime No.208 of 2014 Kenikarai Police Station registered under Section 302 of the Indian Penal Code.

3. Further it is stated in the affidavit that on 27.04.2014 one Arunkumar, Son of Ganesan as complainant has given a complaint in Kenikarai Police Station against the detenu and the same has been registered in Crime No.219 of 2014 under Sections 147, 148, 294(b), 323, 324 and 307 of the Indian Penal Code and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

4. The detaining authority, 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.

5. 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.

6. The learned counsel appearing for the petitioner has contended that against the detenu totally three adverse cases are pending and in Crime No.595 of 2013, Thatchanallur Police Station, since the Investigating Officer has not filed final report within the stipulated period, statutory bail has been granted and the said order cannot be applied with regard to other adverse cases and also ground case and further in one of the adverse cases registered in Crime No.208 of 2014, the detenu has made surrender on 05.05.2014 before the Judicial Magistrate No.I, Thoothukudi and subsequently, a formal arrest has been made in respect of other cases including ground case and no mention has been made in the detention order and therefore, the Detaining Authority, without applying his mind properly, has erroneously invoked Act 14 of 1982 against the detenu. Under the said circumstances, the detention order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has contended that in the instant case, totally three adverse cases are pending against the detenu and further he has involved in the ground case. After considering the fact that the detenu is a habitual offender, the Detaining Authority has rightly invoked Act 14 of 1982 against the detenu by way of passing the impugned detention order and the same does not call for any interference.

8. It is seen from the records that the detenu has involved in the following adverse cases:-

(i) Crime No.889 of 2013 Melapalayam Police Station registered under Sections 294(b), 323, 307 and 34 of the Indian Penal Code.

(ii) Crime No.595 of 2013 Thatchanallur Police Station registered under Sections 302 altered into Sections 147, 148, 341, 302, 109 and 120(b) of the Indian Penal Code.

(iii) Crime No.208 of 2014 Kenikarai Police Station registered under Section 302 of the Indian Penal Code.



With regard to Crime No.208 of 2014, the detenu has made surrender on 05.05.2014 before the Judicial Magistrate No.I, Thoothukudi and subsequently a formal arrest has been made in respect of ground case registered in Crime No.219 of 2014, but the same has not been reflected in the detention order.

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9. It is also seen from the records that in Crime No.595 of 2013 Thatchanallur Police Station registered under Sections 302 altered into Sections 147, 148, 341, 302, 109 and 120(b) of the Indian Penal Code, as per order passed in Cr.M.P.No.236 of 2014, the Judicial Magistrate No.IV, Tirunelveli has granted statutory bail under Section 167(2) of the Code of Criminal Procedure, 1973.

10. The detaining authority has relied upon the order passed therein by way of holding that every possibility on the part of the detenu to get bail in ground case.

11. As pointed out earlier, in Crime No.595 of 2013 Thatchanallur Police Station since final report has not been filed, statutory bail has been granted and the same cannot be a basis for getting bail in the ground case. Therefore, the detaining authority, without applying his mind properly, has erroneously passed the impugned detention order. Since the detaining authority has not applied his mind properly and erroneously passed the impugned detention order, the same is liable to be quashed.

12. In fine, this Habeas Corpus Petition is allowed and the detention order dated 30.06.2014 passed in No.22/Goonda/2014 by the first respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., Babu @ Sathya Babu, Son of Chelladurai at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

1.The District Collector and District Magistrate,
Ramanathapuram District,
Ramanathapuram.

2.The Secretary to Government,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Secretariat, Chennai.

3.The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District,
Ramanathapuram.

4.The Superintendent of Police,
Central Prison, Madurai.

(in duplicate to communicate the detenue)



5.The Joint Secretary to Government,
Public (Law & Order), Fort St.George,
Chennai-9.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/s.P.Rajkumar, Advocate in SR.11960

H.C.P (MD) No.1093 of 2014
12.03.2015

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