



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.01.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

H.C.P. (MD) No.1143 of 2014

C.Sri Ramachandran

.. Petitioner

Vs.

1.State rep.by,
The District Collector & District Magistrate,
Tirunelveli District, Tirunelveli.

2.The Principal Secretary to Government,
Home, Prohibition & Excise (xiv) Department,
Secretariat, Chennai - 9. .. 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 17.07.2014 passed in M.H.S.Confdl.No.47/2014 by the first respondent and set aside the same and set the detenu by name Nirmal @ Ayan aged 33 years S/o.Sankarapandi at liberty forthwith, now detained in Central Prison, Palayamkottai.

For Petitioner : Mr.V.Kathirvelu
Senior counsel
for Mr.K.Prabhu

For Respondents : Mr.A.Ramar
Addl.Public Prosecutor

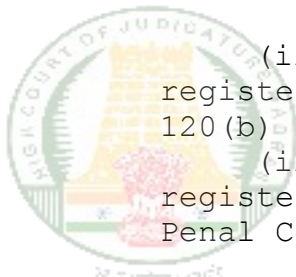
ORDER

(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 M.H.S.Confdl.No.47/2014 dated 17.07.2014 by the detaining authority who has been arrayed as first respondent herein against the detenu by name Nirmal @ Ayan S/o.Sankarapandi and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, Alangulam Police Station 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:

(i) Crime No.568 of 2013 - Alangulam Police Station, registered under Sections 147, 148, 447, 294(b), 302, 506(ii) of the Indian Penal Code altered into Sections 120(b), 147, 148, 447, 294(b), 302 and 506(ii) of the Indian Penal Code.



(ii) Crime No.178 of 2013 - Pappakudi Police Station registered under Sections 147, 148, 294(b), 506(ii) and 302 r/w 120(b) of the Indian Penal Code.

(iii) Crime No.129 of 2014 - Pappakudi Police Station, registered under Sections 294(b), 387 and 506(ii) of the Indian Penal Code.

Further it is stated in the affidavit that on 02.07.2014, the Sub Inspector of Police, Alangulam Police Station has given a complaint against the detenu and others, wherein it is stated that on the same day, by using a vehicle bearing Registration No.TN-20-D-0311 the detenu and others have tried to smuggle half unit of river sand and consequently a case has been registered in Crime No.326 of 2014 under Sections 294(b), 353, 307, 506(ii) and 379 of the Indian Penal Code and also under Section 3 of TNPPDL Act and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

3. 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 cousin of the detenu as petitioner.

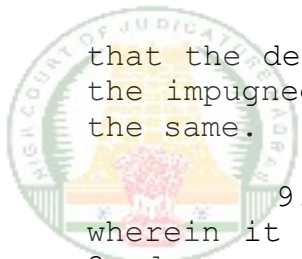
4. On the side of the respondents a counter has been filed, wherein it has been contended to the effect that all the averments made in the petition are false and ultimately prayed to dismiss the same.

5. The learned Senior Counsel appearing for the petitioner has contended that even though in the complaint registered in Crime No.326 of 2014 it has been specifically alleged that the detenu on the date of occurrence has attempted to smuggle half unit of river sand, the detaining authority without applying his mind, has erroneously branded the detenu as 'goonda' instead of 'sand offender' and that itself would be sufficient to quash the detention order. Further it has been contended on the side of the petitioner that a representation has been submitted on the side of the detenu and the same has not been disposed of without delay.

6. Per contra, the learned Additional Public Prosecutor has contended that the detaining authority after perusing all the available records has rightly 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 therefore, the same does not require any interference.

7. It is seen from the detention order that on 02.07.2014 the Sub Inspector of Police, Alangulam Police Station has intercepted a vehicle bearing Registration No.TN-20-D-0311 and at that time the detenu has attempted to smuggle half unit of river sand and also tried to attack police party and consequently a case has been registered in Crime No.326 of 2014 under Sections 294(b), 353, 307, 506(ii) and 379 of the Indian Penal Code and also under Section 3 of TNPPDL Act.

8. As rightly pointed out on the side of the petitioner, the detaining authority instead of brand the detenu as 'sand offender' has erroneously branded him as 'goonda'. Therefore, it goes without saying



that the detaining authority has not applied his mind properly in passing the impugned detention order and that itself would be sufficient to quash the same.

9. On the side of the respondents a proforma has been submitted, wherein it has been clearly stated that in between column Nos.12 and 13, 3 clear working days are available and no explanation has been given on the side of the respondents. Therefore, viewing from any angle, the impugned order of detention is liable to be quashed.

10. In fine, this Habeas Corpus Petition is allowed and the detention order dated 17.07.2014 passed in M.H.S.Confdl.No.47/2014 by the detaining authority/first respondent herein is quashed and the detenu by name Nirmal @ Ayan is ordered to be set at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
Home, Prohibition & Excise (xiv) Department,
Secretariat, Chennai - 9

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

3.The Superintendent, Central Prison, Palayamkottai.

4.The Joint secretary to Government,
Public (Law & Order) Department,
Fort st.George, Chennai-600 009.

5.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to MR. K.Prabhu, Advocate, Sr NO.2670

H.C.P. (MD) No.1143 of 2014
21.01.2015

RG.23.01.2015

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