



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

HABEAS CORPUS PETITION(MD)No.1154 of 2014

D.Balakrishnan,
S/o.David Antony @ Kattari,
106, Subbaiah Muthaliar Puram,
3rd Street,
Tuticorin District.

..Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2.The District Collector,
Tuticorin District,
Tuticorin.

..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 the records relating to the detention order passed by the second respondent in his proceedings No.H.S(M)Confdl.No.20/2014, dated 05.09.2014 and quash the same and direct the respondents to produce the person or body of the detenu, namely David Antony @ Kattari, S/o.Soosai, aged 62 years (now detained at Central Prison, Palayamkotai) before this Court and set him at liberty and pass such further or other orders.

For Petitioner : Mr.N.Anandakumar

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 detention order passed in proceedings No.H.S(M) Confdl.No.20/2014, dated 05.09.2014 by the detaining authority, who has been arrayed as second respondent herein, against the detenu by name David Antony @ Kattari, Son of Soosai and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, NIB CID, Tuticorin as sponsoring authority has submitted an affidavit to the detaining authority wherein it is stated to the effect that the detenu has involved in the following adverse cases:

(i) Crime No.719 of 2013 on the file of Thoothukudi

<https://hcservices.courts.gov.in/hcservices/> Station registered under Section 8(C) read with 20

(b) (ii) (A) of NDPS Act.



(i) Crime No.414 of 2014 on the file of Thoothukudi South Police Station registered under Section 8(C) read with 20(b)(ii)(A) of NDPS Act.

3. Further it is stated in the affidavit that on 25.07.2014, the Inspector of Police, NIB CID, Thoothukudi has found the accused in possession of 3 kgs of dry Ganja and ultimately, a case has been registered in Crime No.35 of 2014 under Section 8(C) read with 20(b)(ii)(B) of NDPS Act, 1985 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 'Drug Offender' 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 son of the detenu as petitioner.

5. On the side of the respondents, a detailed counter has been filed, wherein it has been contended *inter alia* 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 on the side of the detenu, a representation has been given and the same has not been disposed of without delay and therefore, the detention order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor has contended that the representation submitted on the side of the detenu has been duly disposed of without delay and therefore, the detention order in question is not liable to be quashed.

8. On the side of the respondents, a proforma has been submitted wherein it has been clearly stated that in between column Nos.7 to 9 sixteen clear working days are available and in between column Nos.12 and 13 five clear working days are available and no explanation has been given on the side of the respondents with regard to huge delay in disposing of the representation submitted on the side of the detenu and that itself would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India and therefore, the detention order in question is liable to be quashed.

9. In fine, this Habeas Corpus Petition is allowed and the order of detention dated 05.09.2014 in proceedings No.H.S(M)Confdl.No.20/2014 passed by the second respondent/detaining authority is quashed and consequently, the detenu David Antony @ Kattari, Son of Soosai is ordered to be set at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/-

Assistant Registrar(T&P)

/True copy/



To

1. THE SECRETARY TO GOVERNMENT
HOME PROHIBITION AND EXCISE DEPARTMENT,
FORT ST GEORGE, CHENNAI
2. THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE,
TUTICORIN DIST, TUTICORIN.
3. THE SUPERINTENDENT OF CENTRAL PRISION,
PALYAMKOTTAI.
4. THE INSPECTOR OF POLICE,
THOOTHUKUDI SOUTH, THOOTHUKUDI.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) No.1154 of 2014
30.01.2015

PS

PBK 03/02/2015 ::3P-6C: