



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.01.2015

Coram

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P. (MD) No.1189 of 2014

Guna @ Gunasekaran

.. Petitioner

Vs.

1.The Commissioner of Police,
Tiruchirapalli City,
Tiruchirapalli.

2.The State rep.by,
The Secretary to Government,
Home, Prohibition & Excise Department,
State of Tamilnadu,
Secretariat, Chennai - 9.

3.The Inspector of Police,
Palakkarai Police Station,
Trichirapalli District.

.. 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 09.09.2014 passed in C.No.30/Detention/C.P.O/T.C/2014 by the first respondent and quash the same and direct the respondents to produce the body and person of the detenu namely Guna @ Gunasekaran S/o.Arumaidoss now detained in Central Prison, Tiruchirapalli before this Court and set him at liberty.

For Petitioner : Mr.T.Senthilkumar

For Respondents : Mr.C.Mayil Vahana 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 C.No.30/Detention/C.P.O/T.C/2014 dated 09.09.2014 by the detaining authority who has been arrayed as first respondent herein against the detenu by name Guna @ Gunasekaran and quash the same and thereby set him at liberty forthwith.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Inspector of Police, Palakkarai 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.903 of 2012 - Palakkarai Police Station, registered under Sections 8(c) r/w 20(b)(ii)(A) of NDPS Act, 1985.

(ii) Crime No.182 of 2014 - Palakkarai Police Station, registered under Sections 8(c) r/w 20(b)(ii)(A) of NDPS Act, 1985.

Further it is stated in the affidavit that on 10.08.2014 the sponsoring authority viz., Inspector of Police, Palakkarai Police Station has found the detenu in possession of 1.2 kgs of ganja and after observing due formalities, the same has been seized and consequently a case has been registered in Crime No.557 of 2014 under Sections 8(c)r/w 20(b)(ii)(B) of NDPS Act, 1985 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 'drug offender' and thereby passed the impugned detention order and in order to quash the same, the present Habeas Corpus Petition has been filed by the detenu himself as petitioner.

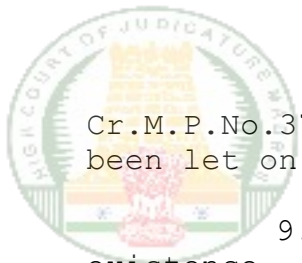
4. On the side of the respondents a detailed counter has been filed, wherein it has been contended to the effect that all the averments made in the petition are false and ultimately prayed to dismiss the same.

5. The learned counsel appearing for the petitioner/detenu has contended that on the side of the detenu a representation has been submitted and the same has not been disposed of without delay and further, the detaining authority has relied upon a similar case particulars and the circumstances mentioned therein are totally alien to the facts and circumstance of the present case and in fact, the bail petition filed by the petitioner/detenu is pending and therefore, the detaining authority has not applied his mind properly. Under the said circumstances, the detention order in question is liable to be quashed.

6. The learned Additional Public Prosecutor has contended that the detaining authority after considering the averments made in the affidavit and other connected documents and also similar case particulars, has rightly derived subjective satisfaction to the effect that the detenu is a 'drug offender' and therefore, the detention order in question does not require any interference.

7. 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.

8. As rightly pointed out on the side of the petitioner, the detaining authority has relied upon the bail order passed in Cr.M.P.No.374 of 2012 by the Additional District and Sessions Court/Special Court for E.C.and NDPS Act Cases, Pudukottai, wherein it has been clearly stated that the concerned Public Prosecutor has represented to the effect that a final report has been filed against the petitioner/accused. Under the said circumstances, the petition filed in



Cr.M.P.No.374 of 2012 has been allowed and the petitioner therein has been let on bail.

9. In the instant case, no such factual circumstances are in existence. Therefore, it is quite clear that the detaining authority has erroneously relied upon the order passed in Cr.M.P.No.374 of 2012. Under the said circumstances, this Court is of the considered view that the subjective satisfaction derived by the detaining authority is also equally erroneous.

10. It has already been pointed out that in disposing of the representation submitted on the side of the detenu there is a delay of three days in between column Nos.12 and 13 and further similar case particulars relied upon by the detaining authority are not at all similar. Therefore, viewing from any angle, the detention order in question is liable to be quashed.

11. In fine, this Habeas Corpus Petition is allowed and the detention order dated 09.09.2014 passed in C.No.30/Detention/C.P.O/T.C/2014 by the detaining authority/first respondent herein is quashed and the petitioner/detenu 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

To

1. THE SECRETARY TO GOVERNMENT HOME, PROHIBITION AND EXCISE DEPARTMENT, SECRETARIAT, CHENNAI.
2. THE DISTRICT MAGISTRATE AND DISTRICT COLLECTOR TRICHIRAPPALLI DISTRICT
3. THE COMMISSIONER OF POLICE TRICHY CITY, TRICHY.
4. THE SUPERINTENDENT CENTRAL PRISON, TRICHIRAPPALLI DISTRICT
(INDUPLICATE FOR COMMUNICATION TO DETENUE)
5. THE JOINT SECRETARY TO GOVERNMENT PUBLIC (LAW & ORDER) FORT ST.GEORGE, CHENNAI-9
6. THE INSPECTOR OF POLICE PALAKKARAI POLICE STATION, TRICHY.
7. THE ADDL.PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC TO M/S.T.SENTHILKUMAR, ADVOCATE SR.NO.1626

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