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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

HABEAS CORPUS PETITION(MD)No.1199 of 2014

Vellammal

..Petitioner

Vs.

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

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

..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 impugned order of detention made in M.H.S.Confdl.No.64 of 2014, dated 05.09.2014 on the file of the District Collector and District Magistrate, Tirunelveli District, the second respondent herein, branding the detenu by name Sivabalan, aged about 25 years, S/o.Rajendran, as "Goonda", who is now confined in Central Prison, Palayamkottai and quash the impugned order of detention by setting aside the same and set him at liberty by producing him before this Court and pass such further or other orders.

For Petitioner : Mr.A.Thiruvadi Kumar

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 M.H.S.Confdl.No.64 of 2014, dated 05.09.2014 by the detaining authority, who has been arrayed as second respondent herein, against the detenu by name Sivabalan, Son of Rajendran and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, Kallidaikurichi Police Station 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.92 of 2013 registered under Section 302 of the Indian Penal Code and altered into Sections 120(b), 109, 114, 302 read with 34 of the Indian Penal Code on the file of Ambasamudram Police Station.

(ii) Crime No.216 of 2014 registered under Sections 147, 148, 341, 294(b) and 302 of the Indian Penal Code on the file of Amabasamudram Police Station.



3. Further it is stated in the affidavit that on 14.07.2014 one Palani has lodged a complaint against the detenu in Kallidaikurichi Police Station and the same has been registered in Crime No.215 of 2014 under Sections 341, 294(b), 307 and 506(ii) 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 even though the detention order in question is passed in English, a copy of the same has not been furnished to the detenu and further on the side of the detenu, two representations have been given and the same have not been disposed of without delay and therefore, the detention order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has contended that all the representations submitted on the side of the detenu have been duly disposed of without delay and therefore, the detention order in question need not be quashed.

8. As pointed out on the side of the detenu, the detention order in question has been passed in English, but a copy of the same has not been furnished to the detenu.

9. On the side of the respondents, a proforma has been submitted wherein it has been clearly stated that with regard to first representation in between column Nos.12 and 13 five clear working days are available and likewise, with regard to second representation in between column Nos.7 to 9 seven clear working days and in between column Nos.12 and 13 seven clear working days are available and no explanation has been given on the side of the respondents with regard to huge delay 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.

10. In fine, this Habeas Corpus Petition is allowed and the order of detention dated 05.09.2014 in M.H.S.Confdl.No.64 of 2014 passed by the second respondent/detaining authority is quashed and consequently, the detenu Sivabalan, Son of Rajendran is ordered to be set at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1. THE PRINCIPAL SECRETARY TO GOVT.,

HOME, PROHIBITION AND EXCISE DEPARTMENT,

STATE OF TAMILNADU, FORT ST.GEORGE, CHENNAI.



2. THE DISTRICT COLELCTOR AND DISTRICT MAGISTRATE,
TIRUNELVELI, TIRUNELVELI.

3. THE SUPERINTENDENT, CENTRAL PRISION,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT.
(IN DUPLICATE FOR COMMUNICATION TO DETENUE)

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4. THE JOINT SECRETARY TO GOVT.,
PUBLIC (LAW & ORDER), FORT ST.GEORGE, CHENNAI-9.

5.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to Mr.A.Thiruvadikumar, Advocate in SR.3382

H.C.P (MD) No.1199 of 2014
27.01.2015

ps

pbk 29/01/2015 ::3p-8c: