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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

HABEAS CORPUS PETITION (MD) No.1303 of 2014

Jose @ Arul Jose

.. Petitioner

Vs.

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

2.The District Collector and
District Magistrate,
Office of the District Collector and
District Magistrate,
Kanniyakumari District.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. 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 entire records connected with the detention order of the second respondent in P.D.No.22/2014, dated 04.11.2014 and quash the same and direct the respondents to produce the body or person of the detenu by name Jose @ Arul Jose, Son of Thavasimuthu, aged about 31 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith and pass such further or other orders.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Ramar
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 P.D.No.22/2014, dated 04.11.2014 by the detaining authority, who has been arrayed as second respondent herein against the detenu by name Jose @ Arul Jose, Son of Thavasimuthu and quash the same and thereby set him at liberty forthwith.



it is stated that the detenu has involved in the following adverse cases:

(i) Crime No.119 of 2010 Kaliyakkavilai Police Station registered under Sections 353, 294(b), 506(i) of the Indian Penal Code and Section 4(1-A) read with Section 21(1) of Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957 and Section 36(A) of Tamil Nadu Minor Minerals Concession Rules 1959 read with 109 of the Indian Penal Code.

(ii) Crime No.138 of 2013 Kollemcode Police Station registered under Sections 379, 353 and 307 of the Indian Penal Code and Sections 4(i), 4(ii), 4(1-A) read with Section 21(1) of Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957 read with G.O.Ms.No.12 of Industry MMCI Department, dated 02.02.2009.

(iii) Crime No.399 of 2013 Kaliyakkavilai Police Station registered under Sections 294(b), 353, 307 and 379 of the Indian Penal Code and Section 4(1-A) read with Section 21(1) of Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957 and Section 36(A) of Tamil Nadu Minor Minerals Concession Rules 1959.

(iv) Crime No.182 of 2014 Kaliyakkavilai Police Station registered under Sections 294(b), 353, 307 and 379 of the Indian Penal Code and Section 4(1-A) read with Section 21(1) of Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957 and Section 36(A) of Tamil Nadu Minor Minerals Concession Rules 1959.

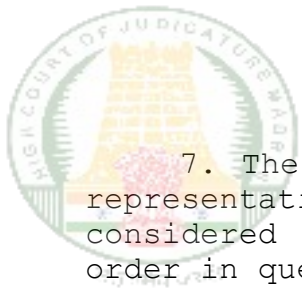
(v) Crime No.190 of 2014 Kollemcode Police Station registered under Sections 294(b), 379 and 307 of the Indian Penal Code and Section 21(ii) of Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957.

3. Further it is stated in the affidavit that on 18.10.2014, the Inspector of Police, Kollemcode Police Station has found the detenu in possession of sand without permit and consequently, a case has been registered in Crime No.251 of 2014 under Sections 294(b), 353, 307 and 379 of the Indian Penal Code and Section 21(ii) of Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957 and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

4. The detaining authority, after considering the averments made in the affidavit and other connected documents, has derived subjective satisfaction to the effect that the detenu is in the habit of committing crime one after another and ultimately branded him as 'Sand 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 detenu himself 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/detenu has contended that on the side of the petitioner/detenu a representation has been submitted and the same has 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 the representation submitted by the petitioner/detenu has been duly considered and disposed of without delay and therefore the detention order in question does not call for any interference.

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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, eight clear working days are available 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 in disposing of the representation submitted on the side of the petitioner/detenu and that itself would affect his rights 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 detention order passed in P.D.No.22/2014, dated 04.11.2014 by the second respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., Jose @ Arul Jose, Son of Thavasimuthu 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 Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and
District Magistrate,
Kanniyakumari District at Nagercoil.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.(in duplicate for communicate to the detenu)
- 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.R.Alagumani, Advocate, SR.No.15011

ORDER MADE IN
H.C.P (MD) No.1303 of 2014
25.03.2015