



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

HABEAS CORPUS PETITION (MD) No.1480 of 2014

Thangapalam

.. Petitioner

Vs.

1.The Secretary to Government,
Prohibition and Excise Department,
Secretariat,
Chennai.

2.The District Collector cum
District Magistrate,
Kanyakumari District
at Nagercoil.

.. 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 records relating to the detention order passed by the second respondent vide P.D.No.05/2014, dated 07.04.2014 and set aside the same and consequently direct the respondents to produce the detenu namely Kannan, Son of Ena Sooraperumal, aged about 24 years before this Court, he is detained at Central Prison, Palayamkottai and set him at liberty .

For Petitioner : Mr.K.P.Narayanakumar

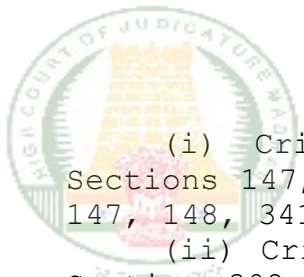
For Respondents : Mr.A.Ramar
Additional Public Prosecutor

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.05/2014, dated 07.04.2014 by the detaining authority, who has been arrayed as second respondent herein against the detenu by name Kannan, Son of Enasooraperumal and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, Kottar 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.85 of 2012 Kottar Police Station registered under Sections 147, 148, 342, 302 of the Indian Penal Code altered into Sections 147, 148, 341, 342, 302 read with Section 149 of the Indian Penal Code.

(ii) Crime No.363 of 2012 Suchindrum Police Station registered under Section 302 of the Indian Penal Code altered into Sections 342 and 302 read with 34 of the Indian Penal Code

(iii) Crime No.729 of 2012 Suchindrum Police Station registered under Sections 147, 148, 324, 307 and 302 of the Indian Penal Code altered into Sections 147, 148, 120(b), 109, 302 and 307 of the Indian Penal Code.

(iv) Crime No.741 of 2012 Suchindrum Police Station registered under Sections 294(b) and 307 of the Indian Penal Code.

(v) Crime No.29 of 2014 Kottar Police Station registered under Section 436 of the Indian Penal Code.

3. Further it is stated in the affidavit that on 20.03.2014 one Asaruthin, Son of Addul Rahim as complainant has given a complaint to the Inspector of Police, Kottar Police Station against the detenu and the same has been registered in Crime No.246 of 2014 under Section 397 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 considering 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 in the detention order it has been specifically mentioned that in all the adverse cases bail has been granted in favour of the detenu and ultimately found that there is every possibility of coming out on bail in ground case, but for deriving subjective satisfaction on the part of the detaining authority, the concerned Inspector of Police has not submitted relevant records with regard to bail orders and therefore, the subjective satisfaction alleged to have been derived by the detaining authority is totally incorrect. Under the said circumstances, the detention order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has contended that in the affidavit submitted by the sponsoring authority details of bail orders with regard to ground case have been clearly mentioned and on the basis of averments made in the affidavit, the detaining authority has clearly passed the impugned detention order and therefore, the detention order in question does not call for any interference.

8. It is seen from the records that the detenu has involved in five adverse cases. In all the adverse cases, it is mentioned in the detention order that the detenu has got bail, but as rightly pointed out on the side of the petitioner, the sponsoring authority has not submitted relevant



records with regard to bail orders for the scrutiny of the detaining authority. The detaining authority has simply mentioned in the detention order that in all the adverse cases, the detenu has been granted bail. Without considering the circumstances, under which, bail has been granted in adverse cases in favour of the detenu, the detaining authority has simply come to a conclusion that since the detenu has got bail in all adverse cases, there is every possibility of coming out on bail in ground case. Therefore, it is needless to say that the detaining authority has not applied his mind properly and further without reading relevant documents with regard to bail orders, the detaining authority has erroneously derived subjective satisfaction so as to pass the impugned detention order. Under the said circumstances, 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.05/2014, dated 07.04.2014 by the second respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., Kannan, Son of Enasooraperumal at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To

1.The Secretary to Government, Prohibition and Excise Department,
Secretariat, Chennai.

2.The District Collector cum District Magistrate,
Kanyakumari District at Nagercoil.

3. The Joint Secretary to the Government,
Public (Law & Order) Fort St. George, Chennai - 600 009.

4. The Superintendent Central Prison, Palayamkottai.

5. The Inspector of Police, Kottar Police Station.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S. K.P.NARAYANA KUMAR,Advocate in SR.No. 16531.

TS/01.04.2015/3P-8C

ORDER MADE IN
H.C.P (MD) No.1480 of 2014