



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.06.2015

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THE HONOURABLE MR. JUSTICE A.SELVAM

and

THE HONOURABLE MR. JUSTICE V.S.RAVI

H.C.P. (MD) No.242 of 2015

Duraipandi @ Allalkathan

.. Petitioner

Vs.

1.State of Tamilnadu,
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to for the records relating to the order of detention dated 30.12.2014 bearing M.H.S.Confdl.No.110/2014 on the file of the 2nd respondent and set aside the same and direct the respondents herein to produce the detenu Viz ., Hariharaselvan @ Ariselvan @ Hari aged 24 years S/o. Durai Pandi @ Allal Kathan now confined in Central Prison, Palayamkottai before thisCourt and set him at liberty.

For Petitioner : Mr.A.Sivasubramanian

For Respondents : Mr.C.Ramesh
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 M.H.S.Confdl.No.110/2014 dated 30.12.2014 by the detaining authority who has been arrayed as second respondent herein against the detenu by name Hariharaselvan @ Ariselvan @ Hari aged 24 years S/o. Durai Pandi @ Allal Kathan and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, Moontradaippu 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 case.

Crime No.155 of 2014, Moontradaippu Police Station, registered under Sections, 147, 148, 302 of the Indian Penal Code altered into Sections 147, 147, 149, 341, 302, 120(b) and 212 of the Indian Penal Code.



3. Further it is stated in the affidavit that on 12.11.2014 one Paulpandi along with his younger brother by name Manikandan has given a complaint against the detenu and others in Moontradaippu Police Station and the same has been registered in Crime No.157 of 2014 under Sections 147, 148, 341, 302 and 201 of the Indian Penal Code altered to Sections 147, 148, 341, 302, 201, 212 r/w 120(b) 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 father of the detenu as petitioner.

5. On the side of the respondents 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 on the side of the detenu two representations are submitted 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 the representations submitted on the side of the detenu are duly disposed of without delay and therefore, the detention order in question does not call for any interference.

8. 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.7 to 9, 7 clear working days are available and in between column Nos.12 to 13, 9 clear working days are available and with regard to second representation in between column Nos.7 to 9, 6 clear working days are available and in between column Nos.12 to 13, 5 clear working days are available no explanation has been given on the side of the respondents with regard to such delay in disposing of the representations submitted on the side of the 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 dated 30.12.2014 passed in M.H.S.Confdl.No.110/2014 by the detaining authority/second respondent herein is quashed and the detenu by name Hariharaselvan @ Ariselvan @ Hari is ordered to be set at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(AE)



To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. The Joint Secretary to Govt. of Tamilnadu,
Public (Law & Order) Dept., Fort. St. George, Chennai - 9.

3. The Superintendent, Central Prison, Palayamkottai.

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

5. The Addl. Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s. Siva Ayyapan Associates, SR.No.31107

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