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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.04.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P. (MD) No.44 of 2015

Selvamani

.. Petitioner

Vs.

1.State rep.by,

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

2.The District Magistrate & District Collector,
O/o.District Magistrate & District Collector,
Ariyalur District, Ariyalur.

3.The Superintendent of Central Prison,
Central Prison
Tiruchirapalli.

.. 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 31.12.2014 passed in Cr.M.P.No.21/2014 by the second respondent to set aside the same and direct the respondents to produce the body or person of the detenu namely Selvamani S/o.Ramalingam aged about 32 years now detained in Central Prison, Tiruchirapalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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 Cr.M.P.No.21/2014 dated 31.12.2014 by the detaining authority who has been arrayed as second respondent herein against the detenu by name Selvamani S/o.Ramalingam and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, Jayankondam 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:

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

(1) Crime No.430 of 2013 - Jayankondam Police Station,
registered under Section 379 of the Indian Penal Code.



- (ii) Crime No.242 of 2013 - Kattumannarkoil Police Station, registered under Section 379 of the Indian Penal Code.
- (iii) Crime No.160 of 2014 - Sethiathope Police Station, registered under Section 379 of the Indian Penal Code.
- (iv) Crime No.159 of 2014 - Sethiathope Police Station, registered under Section 379 of the Indian Penal Code.

Further it is stated in the affidavit that on 16.12.2014 one Baskar as complainant has lodged a complaint in Jayankondam Police Station against the detenu and the same has been registered in Crime No.436 of 2014 under Section 392 r/w 397 of the Indian Penal Code and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

3. 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 detenu himself as petitioner.

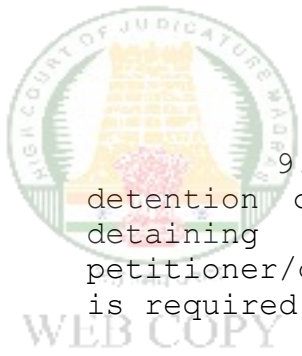
4. On the side of the respondents counter has been filed, wherein it has been contended *that* all the averments made in the petition are false and ultimately prayed to dismiss the same.

5. The learned counsel appearing for the petitioner has contended that the detaining authority has relied upon the order passed in Cr.M.P.No.8840 of 2014 and in fact, the factual aspects mentioned therein are not similar to that of the present case 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 has relied upon similar case by way of accepting the order passed in Cr.M.P.No.8840 of 2014 and therefore, the detention order in question is not liable to be quashed.

7. On the basis of the divergent submissions made on either side, the Court has perused the order passed in Cr.M.P.No.8840 of 2014, wherein it has been clearly stated that the concerned petition has been filed under Section 167(2) of the Code of Criminal Procedure, 1973.

8. It is seen from the records that the detenu has already involved in four adverse cases. In the ground case he has not filed any bail application. Further, as pointed out earlier, the order passed in the petition filed in Cr.M.P.No.8840 of 2014 is only under Section 167 (2) of the Code of Criminal Procedure, 1973 and similar situation has not arisen in the present case. Therefore, it is quite clear that the detaining authority has not applied his mind properly in relying upon similar facts particulars and that itself would be sufficient to quash the impugned detention order.



9. In fine, this Habeas Corpus Petition is allowed and the detention order dated 31.12.2014 passed in Cr.M.P.No.21/2014 by the detaining authority/second 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

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition & Excise Department,
State of Tamilnadu,
Secretariat, Chennai - 9.
- 2.The District Magistrate & District Collector,
O/o.District Magistrate & District Collector,
Ariyalur District, Ariyalur.
- 3.The Superintendent of Central Prison,
Central Prison
Tiruchirapalli.
4. The Joint Secretary to Govt.,
Public (Law & Order),
Fort St.George, Chennai - 9.
- 5.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.44 of 2015
20.04.2015

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