



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.04.2015

Coram

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

H.C.P. (MD) No.69 of 2015

B.Vinnarasi

.. Petitioner

Vs.

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

2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the entire records connected with the detention order dated 03.01.2015 passed in No.2/BCDFGISSV/2015 by the second respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely P.Babu S/o.Pitchandi Thevar aged 43 years now detained in Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.K.Sudalayandi

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 No.2/BCDFGISSV/2015 dated 03.01.2015 by the detaining authority who has been arrayed as second respondent herein against the detenu by name Babu S/o.Pitchandi and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, Tirunelveli Junction 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.736 of 2014 - Pettai Police Station, registered under Sections 294(b), 302 and 506(ii) of the Indian Penal Code.

Further it is stated in the affidavit that one Basheer S/o.Kader Batsha as complainant has given a complaint against the detenu in Tirunelveli Junction Police Station and the same has been registered in Crime No.896 of 2014 under Sections 341, 294(b), 387, 307 and 506(ii) 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 wife of the detenu as petitioner.

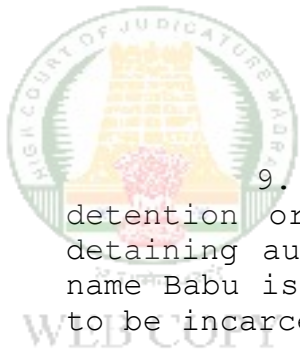
4. On the side of the respondents counter has been filed, wherein it has been contended *that* all the averments made in the petition are false and ultimately prayed to dismiss the same.

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.4298 of 2013 dated 17.09.2013 by the Principal District and Sessions Court, Tirunelveli and the facts mentioned therein are not similar to that of the facts 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 order passed in Cr.M.P.No.4298 of 2013 by the Principal District and Sessions Court, Tirunelveli is similar to that of the present case. Under the said circumstances, the detaining authority has rightly relied upon the similar case particulars and therefore, the detention order in question need not be quashed.

7. On the basis of the rival submissions made on either side, the Court has perused the order passed in Cr.M.P.No.4298 of 2013, wherein it has been clearly mentioned that the defacto complainant has not sustained any injury, whereas, in the present ground case, the defacto complainant has sustained injury due to overtacts alleged to have been committed by the detenu. But the detaining authority has not found out the said fact.

8. Even though in the order passed in Cr.M.P.No.4298 of 2013 it has been mentioned that the petitioner therein has already involved in a case, even in the present case, the detenu has also involved in an adverse case, the same cannot be a ground for coming to a conclusion that both the facts are identical, since the defacto complainant in the ground case has sustained injury by the alleged overtacts of the detenu. Therefore, similar case particulars relied upon by the detaining authority are not proper and on that ground alone, the detention order in question is liable to be quashed.



9. In fine, this Habeas Corpus Petition is allowed and the detention order dated 03.01.2015 passed in No.2/BCDFGISSV/2015 by the detaining authority/second respondent herein is quashed and the detenu by name Babu 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(c.s)

To

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

2.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

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

4. The Superintendent, Central Prison, Palayamkottai.

+1cc to M/S. K.Sudalai yandi Advocate in SR.No. 20130

TS/23.04.2015/2P-6C

H.C.P. (MD) No.69 of 2015

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