



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.04.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P. (MD) No.85 of 2015

Loganayaki

.. Petitioner

Vs.

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

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

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

.. 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 pertaining to the impugned detention order passed by the 2nd respondent in M.H.S.Confdl.No.105/2014 dated 22.12.2014 and quash the same and direct the respondents to produce the detenu namely Esakkirajan @ Bullet Pandian S/o.Narayana Thevar aged about 39 years, detained in Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Karunanithi
for Mr.R.Vinoth Bharathi
For Respondents : Mr.T.Mohan
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.105/2014 dated 22.12.2014 by the detaining authority who has been arrayed as second respondent herein against the detenu by name Esakkirajan @ Bullet Pandian S/o.Narayana Thevar and quash the same and thereby set him at liberty forthwith.



2. The Inspector of Police, Kadayam 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.246 of 2013, Alwarkurichi Police Station registered under Section 420 of the Indian Penal Code.

(ii) Crime No.248 of 2013, Alwarkurichi Police Station registered under Sections 147, 447, 294(b), 435 and 506(ii) of the Indian Penal Code.

(iii) Crime No.620 of 2014, Alangulam Police Station registered under Sections 420, 506(i) and 170 of the Indian Penal Code.

(iv) Crime No.208 of 2014, Pappakudi Police Station registered under Sections 170, 420 and 596(i) of the Indian Penal Code.

(v) Crime No.311 of 2014, Ambasamudram Police Station registered under Sections 170, 420 and 506(ii) of the Indian Penal Code.

Further it is stated in the affidavit that one Gnanaboopathi has given a complaint against the detenu in Kadayam Police Station and a case has been registered in Crime No.411 of 2014 under Sections 419, 420 and 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 wife of the detenu as petitioner.

4. 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.

5. The learned counsel appearing for the petitioner has contended that on the side of the detenu five representations are submitted. But the same have not been disposed of without delay and further, the detaining authority has erroneously relied upon similar case particulars on the basis of the bail order passed in Cr.M.P.No.3526 of 2014 by the Judicial Magistrate, Ambasamudram and in fact, the offences mentioned therein are not similar to that of the offences found in the ground case. 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 after considering the averments made in the affidavit and other connected documents has rightly passed the detention order and therefore the same does not require any interference.

7. On the side of the respondents a proforma has been submitted wherein it is stated that on the side of the detenu five representations have been sent and with regard to fifth representation in between column Nos.7 to 9, 7 clear working days are available and in between column Nos.12 and 13, 4 clear working days are available.



8. In respect of the second contention urged on the side of the petitioner, this Court has perused the bail order passed in Cr.M.P.No.3526 of 2014 by the Judicial Magistrate, Ambasamudram and the same is in respect of the offences alleged to have been committed by the petitioner under Sections 294(b), 506(ii), 417, 406 and 120(b) of the Indian Penal Code.

9. As rightly pointed out on the side of the petitioner, ground case has been registered mainly under Section 397 of the Indian Penal code along with other sections of law. Since ground case has been registered under Section 397, the concerned Magistrate has no power to grant bail. Therefore, it is needless to say that similar case particular relied on by the detaining authority is not similar to that of the offences mentioned in the ground case. The detaining authority has not applied his mind properly and therefore, on the basis of the contentions put forth on the side of the petitioner, the detention order in question is liable to be quashed.

10. In fine, this Habeas Corpus Petition is allowed and the detention order dated 22.12.2014 passed in M.H.S.Confdl.No.105/2014 by the detaining authority/second respondent herein is quashed and the detenu by name Esakkirajan @ Bullet Pandian is ordered to be set at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(Writ)

/True copy/

Sub Assistant Registrar

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To

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

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

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli district.(In duplicate for communicate to deteu)

4.The Joint Secretary to Government,
Public (Law and Order),Fort St., George, Chennai-9

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

+1cc to MR.r.vinoth bharathi, ADVOCATE IN SR NO. 21689

H.C.P. (MD) No.85 of 2015
23.04.2015