



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.92 of 2015

E.Jansi .. Petitioner

Vs.

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

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

3.The Inspector of Police,
Panagudi Police Station,
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 connected with the detention order dated 08.01.2015 passed in M.H.S.Confdl No.01/2015 by the second respondent and quash the same and direct the respondents to produce the detenu namely Edison S/o.Durairaj Nadar, Male, aged 37 years, now detained in Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.R.Anand

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.01/2015 dated 08.01.2015 by the detaining authority who has been arrayed as second respondent herein against the detenu by name Edison S/o.Durairaj Nadar and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, Panagudi 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:



(i) Crime No.44 of 2012 - Panagudi Police Station, registered under Sections 379 of the Indian Penal code and 4(i) 4(ii) r/w 21 (1) of Mines and Minerals (Development and Regulation) Act, 1959.

Further it is stated in the affidavit that the concerned Village Administrative Officer as complainant has given a complaint against the detenu in Panagudi Police Station and the same has been registered in Crime No.8 of 2015 under Sections 294(b), 353, 309 and 379 (sand theft) of the Indian Penal Code and r/w Sections 21(1) of Mines and Minerals (Development and Regulation) Act, 1959 and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

3. The detaining authority after considering the habitual nature of the detenu, has derived subjective satisfaction to the effect that he is a 'sand offender' and ultimately branded him under the said caption 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.

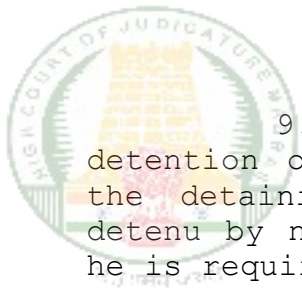
5. The learned counsel appearing for the petitioner has contended that the detenu has already involved in three adverse cases. But the sponsoring authority has not submitted correct particulars to the detaining authority and the detaining authority has simply mentioned Crime No.44 of 2012 as an adverse case. Since the sponsoring authority has not submitted full particulars with regard to adverse cases to the detaining authority and since the detaining authority has not mentioned anything about the remaining adverse cases, the entire detention order 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 branded the detenu as 'sand offender' by way of passing the impugned detention order and therefore, the same does not require any interference.

7. In page No.143 of the booklet it has been clearly mentioned that the detenu has involved in the following adverse cases:

- (i) Crime No.175 of 2011
- (ii) Crime No.44/2012
- (iii) Crime No.341 of 2013

8. As rightly pointed out on the side of the petitioner, the detaining authority has mentioned only Crime No.44 of 2012 as an adverse case and no mention has been made with regard to remaining adverse cases. Therefore, it is needless to say that the sponsoring authority has not submitted all particulars relating to adverse cases and the detaining authority has passed only an incomplete order of detention and that itself would affect rights of the detenu 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 08.01.2015 passed in M.H.S.Confdl No.01/2015 by the detaining authority/second respondent herein is quashed and the detenu by name Edison is ordered to be set at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(Per.Admn)

/True copy/

Sub Assistant Registrar

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To

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

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

3.The Superintendent, Central Prison, Palayamkottai.

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

5.The Inspector of Police, Panagudi Police Station, Tirunelveli District.

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

+1cc to MR.R.ANAND,ADVOCATE IN SR NO. 20190

H.C.P. (MD) No.92 of 2015
20.04.2015

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