

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11..04..2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

HABEAS CORPUS PETITION No.2703 of 2015

Mrs.Sivagami

... Petitioner

vs.

1.State of Tamil Nadu
Rep. by The Secretary,
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Vepery, Chennai 600 007.

.... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the entire records relating to the Detention Order passed by the second respondent in Memo BCDFGISSSV No.997/015, dated 22.09.2015, quash the same and consequently, to direct the respondents to produce the detenu viz., Parthiban, aged about 25 years, Son of Gajendran, now confined at Central Prison, Puzhal, Chennai, before this Court and to set him at liberty.

For Petitioner : Mr.M.Baskar

For Respondents : Mr.A.N.Thambidurai
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.JAICHANDREN.,J.)

Petitioner is the mother of the detenu, namely, Parthiban, and challenge is made to the order of detention, dated 22.09.2015, passed by the second respondent, under which the detenu has been branded as a "Goonda" and detained under the Tamil Nadu Act 14 of 1982.

2. As per the grounds of detention dated 22.09.2015, the detenu came to the adverse notice in the following four cases:-

1. E-3 Teynampet Police Station Crime No.1821 of 2015 for the alleged commission of the offence u/s.147, 148, 294(b), 324 and 506(ii) of IPC and the offence said to have taken place at 15.00 hours on 21.06.2015.

2. E-3 Teynampet Police Station Crime No.2331 of 2015 for the alleged commission of the offence u/s.294(b), 323, 384 and 506(ii) of IPC and the offence said to have taken place at 22.00 hours on 28.07.2015.

3. E-3 Teynampet Police Station Crime No.2416 of 2015 for the alleged commission of the offences u/s.341, 294(b), 324 IPC and 379 (NP) IPC and the offence said to have taken place at 20.00 hours on 08.08.2015.

4. E-3 Teynampet Police Station Crime No.2636 of 2015 for the alleged commission of the offences u/s. 392 of IPC and the offence said to have taken place at 20.30 hours on 31.08.2015.

3. In the grounds of detention, it is stated among other things, that the detenu along with others were involved in the commission of offences of extortion and attempt to murder which took place at about 10.15 hours on 01.09.2015, and in that regard, the Inspector of Police, E-3 Teynampet Police Station, has registered a case against the detenu in Crime No.2639 of 2015 for the commission of the offences under Sections 341, 294 (b), 323, 307, 384, 427, 336 and 506 (ii) IPC (which is the ground case). The detenu and two other persons were arrested on 01.09.2015 at about 14.00 hours. On such arrest, all the three voluntarily came forward to give a confession statement, which were recorded individually in the presence of witnesses, wherein, they have admitted their involvement in all the four adverse cases and based on their confessions, crime weapon and other material objects were seized. Thereafter, the detenu as well as the other accused were produced before the jurisdictional Magistrate, who remanded them to judicial custody till 15.09.2015 and subsequently, their remand period was extended till 29.09.2015.

4. The detaining authority on being satisfied with the materials placed before him by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, has clamped the order of detention.

5. Mr. M. Baskar, learned counsel appearing for the petitioner, would submit that the detenu is in remand in connection with the adverse cases as well as in the ground case

in Crime No.2639 of 2015. The detenu moved application for bail in connection with the ground case in CrI.M.P.No.14725 of 2015 before the Principal Sessions Judge, Chennai, and the bail was granted but, he is yet to offer sureties. The detenu has also moved the applications for bail in connection with the adverse cases and the same are pending. However, the detaining authority has arrived at the subjective satisfaction that the detenu is likely to come out on bail on all the adverse cases by placing reliance on a similar case registered in Crime No.2303 of 2015 at J-1 Saidapet Police Station only for the offences under Sections 341, 384 and 506 (ii) IPC wherein the bail was granted, whereas, the 3rd adverse cases was registered against the detenu in Crime No.2416 of 2015 for the commission of the offences under Sections 341, 294(b), 324 of IPC and 379 (NP) of IPC. Since, the similar case particulars furnished by the detaining authority are not similar to that of the 3rd adverse case, the subjective satisfaction arrived at by the detaining authority is vitiated and hence, prays for the quashment of the said order.

6. Per contra, Mr.A.N.Thambidurai, the learned Additional Public Prosecutor would contend that on due and proper application of mind, the detaining authority has rightly arrived at the subjective satisfaction and hence, prays for the dismissal of the petition.

7. As rightly pointed out by the learned counsel appearing for the petitioner, in the 3rd adverse case, in Crime No.2416 of 2015 the major offences registered against the detenu was for the commission of the offences under Sections 324 and 379 (NP) of IPC, whereas, the similar case particulars furnished by the detaining authority, was registered only for the offences under Sections 341, 384 and 506 (ii) IPC and therefore, in our considered opinion, the similar case particulars furnished by the detaining authority in paragraph No.4 of the grounds of detention are not similar to that of the 3rd adverse case. Therefore, the subjective satisfaction arrived at by the detaining authority is vitiated. Hence on this sole ground, the order of detention is liable to be quashed.

8. In the result, this Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in Memo BCDFGISSSV No.997/2015, dated 22.09.2015, is quashed. The detenu is ordered to be set at liberty, forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar(CO)

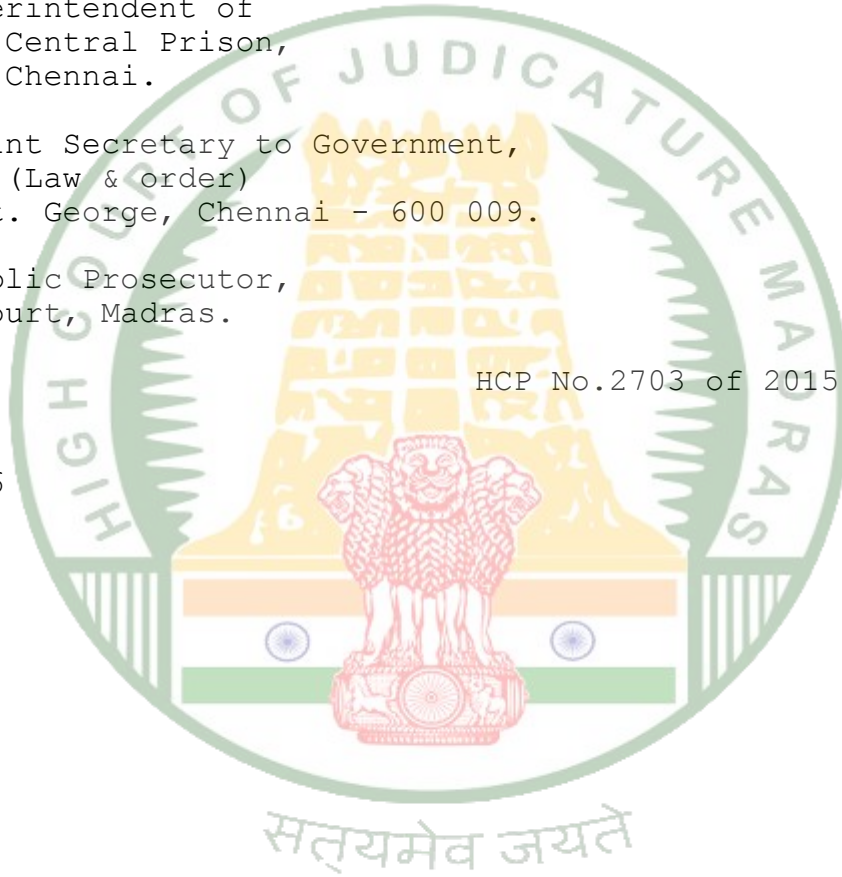
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To:

- 1.The Secretary, Home,
Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Vepery, Chennai 600 007.
- 3.The Superintendent of
Prisons Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (Law & order)
Fort St. George, Chennai - 600 009.
5. The Public Prosecutor,
High Court, Madras.

HCP No.2703 of 2015

JSV(CO)
Eu 20.5.16



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