

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.8.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.1375 of 2016 and
Crl.M.P.No.8441 of 2016

Kothai Nayagi

..... Petitioner

Vs

1. The Secretary to Govt.,
Home, Prohibition & Excise Department.,
Fort St.George, Chennai- 600 009.

2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7.

3. The Superintendent of Police,
Central Prison, Puzhal-II,
Chennai.

4. The Inspector of Police,
K2, Ayanavaram Police Station,
Chennai-23.

..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS directing the 2nd respondent to transfer petitioner's son, the detenu herein V.Siva s/o Viswanathan, aged about 23 years, now confined at Central Prison-II, Puzhal, Chennai from Central Prison-II, Puzhal to Juvenile Justice Home at Chennai and further direct the 1st respondent to revoke the Detention Order made in BCDFGISSSV No.574/2016 dated 17.06.2016.

For Petitioner	: Mr.A.Nirmal Kumar
For Respondents	: Mr.V.M.R.Rajentren
	Additional Public Prosecutor

ORDER

(Order of the Court was made by **S.NAGAMUTHU, J.**)

The petitioner is the mother of one Siva s/o Viswanathan, who is now lodged in the Central Prison, Puzhal-II, Chennai. He has been detained under Act 14 of 1982. As per the order of the second respondent by his proceedings No.574/BCDFGISSSV/2016 dated 17.06.2016. Challenging the same, the petitioner has come up with this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though several grounds have been raised by the petitioner, the learned counsel for the petitioner would mainly focus his arguments on the ground that the detenu is a juvenile and therefore, he should not have been detained under Act 14 of 1982 branding him as "Goonda". As per the school certificate, his date of birth is 06.03.1999 and thus, the detenu is only a juvenile. The learned counsel would rely on the Division Bench Judgment of this Court in RAMACHANDRAN Vs. INSPECTOR OF POLICE, H-3, POLICE STATION, MADRAS & 2 OTHERS reported in 1994-2-L.W. (Cri.)

585 wherein while considering the identical issue, the Division Bench has held in paragraph 19 and 20 as follows:

"19. It is a clear discretion of the Police and the Court, after complying with the requirements of law in this behalf, to choose the custody of the juvenile, except in jail, if proper care is taken and the age of the offender is ascertained and when he is found a juvenile, care is taken to see that he is not left in the custody of the parents, who are likely to expose him to the dangers of the social evils and all such other conditions are met with concern for the welfare of the child (juvenile), there will be no occasion for anybody to resort to action of preventive detention of such person.

20. When we say that a juvenile shall not be detained under Tamil Nadu Act 14 of 1982, we do not for a moment intend to suggest that when young children are found by the law enforcement authorities to be engaged in anti-social activities, no action should be taken against them. There should be more prompt action than in the case of any adult offender, in the case of a juvenile. He should be taken to proper custody but for the purposes under juvenile Justice Act, the detaining Authorities shall have the freedom to create a special home for juvenile delinquents and juvenile delinquents can be detained in such homes, but for the purposes envisaged under the Juvenile Justice Act".

4. Similar view has been taken by the learned single Judge of this Court in

PRABAKARAN VS. STATE OF TAMILNADU & OTHERS reported in 2004-1-L.W. (Crl.).159.

5. In view of the said Judgment of this Court, since we hold that the detenu is a juvenile, the order of detention cannot withstand the scrutiny of law. Therefore, the same is liable to be set aside.

6. Accordingly, the habeas corpus petition is allowed and the detention order dated 17.06.2016, passed by the 2nd respondent is quashed. The detenu is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Consequently, connected Crl.M.P.No.8441 of 2016 is closed.

kua

(S.N.J.,) (V.B.D.J.,)
22.8.2016

To

1. The Secretary to Govt.,
Home, Prohibition & Excise Department.,
Fort St.George, Chennai- 600 009.

2. The Commissioner of Police,
Greater Chennai, Vepery, Chennai-7.

3. The Superintendent of Police,
Central Prison, Puzhal-II, Chennai.

4. The Inspector of Police,
K2, Ayanavaram Police Station, Chennai-23.

5.The Public Prosecutor, High Court, Madras.

**S.NAGAMUTHU J.,
AND
V.BHARATHIDASAN, J.**
kua

H.C.P.No.1375 of 2016 and
Crl.M.P.No.8441 of 2016

22.8.2016