

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.401 of 2016

S.Manoranjitham

...Petitioner/Mother of
the detenu

vs.

1.The Inspector of Police,
T-2, Ambattur Estate,
Chennai-600 005

2.The Commissioner of Police,
Egmore, Chennai-600 008

3.The Secretary to Government,
Home Prohibition and Excise
Department,
Chennai-600 009

...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas directing the respondents to produce petitioner's son Thanga Kumar @ Aravind, male aged about 29 years, son of Saminathan, detained under Act 14/82, vide order No.1226/2015 dated 04.12.2015, and now confined at Central Prison II, Puzhal, Chennai, before this Court and set him at liberty forthwith by calling for the records and setting aside the order of detention bearing BCDFGISSSV No.1226/2015, dated 04.12.2015, on the file of the 2nd respondent.

For Petitioner : Mr.M.Ganesh

For Respondents :Mr.V.M.R.Rajentren,Addl.P.P.

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 the records relating to detention order, dated 04.12.2015, passed in No.1226 of 2015, by the detaining authority, who has been arrayed as the second respondent herein, against the detenu, by name Thangakumar @ Arvind, Son of Saminathan, and quash the same.

2. The Inspector of Police, T-2, Ambattur Estate Police Station, as sponsoring authority, has submitted an affidavit to the detaining authority, wherein it is averred that the detenu has involved in the following adverse case:

T-2, Ambattur Estate Police Station Crime No.437 of 2015, registered under Sections 307 of the Indian Penal Code, altered into one under Section 302 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 3.10.2015, one Saijee, son of Sathoo, as defacto complainant, has given a complaint against the detenu in T2 Ambattur Estate Police Station and the same has been registered in Crime No.443 of 2015 under Sections 341, 294(b), 336, 427, 392 read with Section 397 of the Indian Penal Code and ultimately requested the detaining authority to invoke Act 14 of 1982, against the detenu.

4. 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 professional offender and ultimately branded him as a 'goonda', by way of passing the impugned detention order and in order to quash the same, the present petition has been filed by the mother of the detenu, as petitioner.

5. Even though the detention order in question has been passed on 04.12.2015 and several adjournments have been granted, on the side of the respondents counter has not been filed. Under such circumstances, the present habeas corpus petition is disposed of on the basis of available materials on record.

6. The learned counsel appearing for the petitioner has raised the following points to quash the impugned detention order:

(1) The petitioner has sent a representation to the concerned authority and the same has not been disposed of.

(2) The detaining authority has not applied his mind properly in relying upon similar case particulars.

7. Per contra, the learned Additional Public Prosecutor has represented that in the instant case, on the basis of materials submitted by the sponsoring authority, the detaining authority has rightly passed the impugned detention order and the same does not call for any interference.

8. It is seen from the records that the petitioner has sent a representation to the concerned authority. But, this Court has grouped the entire typed set, submitted on the side of the petitioner. No clinching document has been forthcoming for the purpose of proving the alleged factum of sending representation to the concerned authority and therefore, the first point raised on the side of the petitioner cannot be accepted.

9. It is seen from the detention order that in Crime No.1960 of 2012, registered under Sections 341, 294(b), 336, 427, 392, 397 and 506(ii) of the Indian Penal Code, a bail order has been passed in Crl.M.P.No.2392 of 2012, by the Principal Sessions Court, Thiruvallur. But, in the typed set, order passed in Crl.M.P.No.2392 of 2012 is not found place. Therefore, it is quite clear that without seeing the order passed in Crl.M.P.No.2392 of 2012, the detaining authority has passed the impugned order and therefore, it is quite clear that the detaining authority has not applied his mind properly and that itself would affect the 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.

In fine this Habeas Corpus Petition is allowed. The detention order dated 04.12.2015, passed in No.1226 of 2015, by the detaining authority against the detenu, by name Thangakumar @ Aravind, Son of Saminathan, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

msh

To

- 1.The Inspector of Police,
T-2, Ambattur Estate,
Chennai-600 005
- 2.The Commissioner of Police,
Egmore, Chennai-600 008
- 3.The Secretary to Government,
Home Prohibition and Excise Department,
Chennai-600 009
4. The Joint Secretary, to Government Public
(Law & order) Chennai-9.
- 5.The Superintendent, Central Prison,
Puzhal, Chennai.
- 6.The Public Prosecutor,
High Court, Madras.

+ 1 cc go MR.M. Ganesh, Advocate SR.55508