

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2016

CORAM:

THE HON'BLE MR. JUSTICE A.SELVAM

and

THE HON'BLE MR. JUSTICE P.KALAIYARASAN

HCP No.416 of 2016

A.Mookkaiah

.. Petitioner/Father of the
Detenu

Vs.

1. State of Tamilnadu rep.
by Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai 600 009
 2. The Commissioner of Police
Tiruppur City
- ... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India for issuing a Writ of Habeas Corpus, to call for the record of the first respondent, pertaining to the order made in C.No.03/G/IS TPR (C)/2016 dated 14.1.2016 in detaining the detenu under the Tamil Nadu Act 14 of 1983 as a Goonda and quash the same and direct the respondents to produce the detenu, namely M.Murugesan @ Vivek Kumar, son of Mookkaiah, who is detained at the Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.J.Franklin

For Respondents: Mr.V.M.R.Rajentren
Addl.Public Prosecutor

O R D E R

[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 dated 14.1.2016 passed in C.No.03/G/IS TPR (C)/2016 by the detaining authority, who has been arrayed as the second respondent herein, against the detenu by name M.Murugesan @ Vivek Kumar, son of Mookkaiah, and quash the same.

2. The Inspector of Police, Anupparpalayam 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 cases:

(1) Karumathampatti Police Station Crime No.535 of 2015, registered under Section 392 of the Indian Penal Code

(2) Karumathampatti Police Station Crime No.536 of 2015, registered under Section 392 of the Indian Penal Code

(3) Anupparpalayam Police Station Crime No.1251 of 2015 registered under section 392 of the Indian Penal Code

3. Further, it is averred in the affidavit that on 11.12.2015, one Kumar, son of Lakshmanan, as defacto complainant, has lodged a complaint against the detenu in Anupparpalayam Police Station and the same has been registered in Crime No.1256 of 2015 under sections 341, 294(b), 387, 427, 307 and 506(ii) 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 habitual 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 father of the detenu, as petitioner.

5. 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 affidavit are false and the detaining authority, after considering the available records, has rightly invoked Act 14 of 1982 against the detenu, by way of passing the impugned detention order and therefore, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has contended that the detention order in question has been passed on 14.1.2016 and the detaining authority, on 19.1.2016 has passed an amended order (Tamil version) and therefore, the detaining authority has not applied his mind properly before passing the detention order and under the said circumstances, the detention order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor, appearing for the respondents, has contended that on 19.1.2016, the amended order has been passed only with regard to year amended in the original detention order and the same would not affect the rights of the detention order and therefore the detention order in question does not call for any interference.

8. It is seen from the records that the detention order in question has been passed on 14.1.2016. On 19.1.2016, the detaining authority has passed the amended order (Tamil version), wherein it has been clinchingly stated that instead of the year 2015, year 2016 has been erroneously mentioned. The only contention put forth on the side of the petitioner is that the detaining authority before passing the detention order has not applied his mind properly.

9. Considering the fact that the detention order in question has been passed on 14.1.2016, whereas amended order has been passed on 19.1.2016, this Court is of the considered view that at the time of passing the detention order, 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 and the detention order dated 14.1.2016 passed in C.No.03/G/IS TPR (C)/2016 by the second respondent is quashed and the respondents are directed to set the detenu, by name M.Murugesan @ Vivek Kumar, son of Mookkaiah, at liberty forthwith, unless he is required to be immured in connection with some other cases.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ajr
To

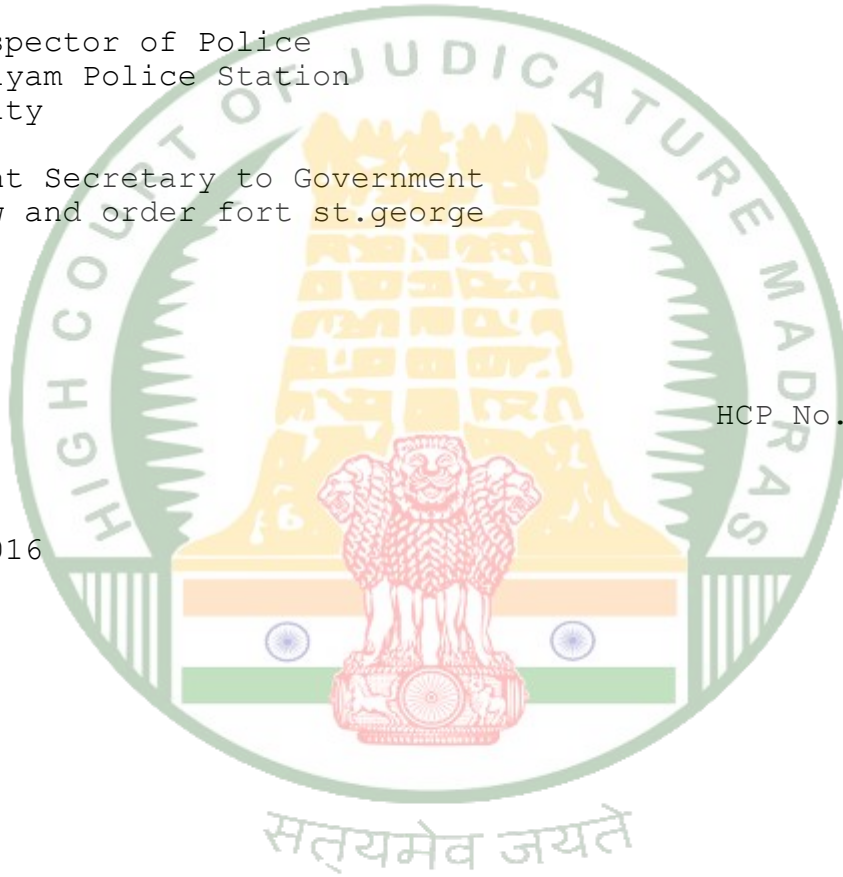
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2. The Commissioner of Police
Tiruppur City
3. The Superintendent
Central Prison, Coimbatore
- 4.The Public Prosecutor
High Court, Madras.
5. The Inspector of Police
Karumashampatti Police Station
Coimbatore District
- 6 The Inspector of Police
Anupporpalyam Police Station
Tirupur City
- 7.The Joint Secretary to Government
Public Law and order fort st.george
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