

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.521 of 2016

Illaya Raja

.... Petitioner

vs.

1.Government of Tamil Nadu,
rep.by its Principal Secretary,
Home, Prohibition,
Fort St.George, Chennai-600 009

2.The Commissioner of Police,
Greater Chennai Police,
Chennai-600 007

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records in connection with the order of detention order passed in No.172/BCCDFGISSSV/2016, dated 22.02.2016, on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the body of petitioner's mother Vijayalakshmi, wife of N.Mohan, aged about 38 years, now confined in Special Prison for Woman, Puzhal, Chennai, before this Court and set her at liberty.

For Petitioner : Mr.S.N.Narasimhulu

For Respondents : Mr.V.M.R.Rajentren, APP

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 22.02.2016, passed in Memo No.172/BCDFGISSSV/2016, by the detaining authority, who has been arrayed as the second respondent herein,

against the detainee, by name Vijayalakshmi, wife of Mohan and quash the same.

2. The Inspector of Police, Central Crime Branch, Greater Chennai Police, as sponsoring authority, has submitted an affidavit to the detaining authority, wherein it is averred that the detainee has involved in the following adverse cases:

1.H-5 New Washermenpet Police Station,
Cr.No.873 of 2015, under Sections 406 and 420 of the
Indian Penal Code.

2. Central Crime Branch, Cr.No.163 of 2015,
under Sections 406, 420 read with Section 34 of the
Indian Penal Code.

3. Further, it is averred in the affidavit that on 05.02.2016, one Karikalan, son of Masilamani, has lodged a complaint against the detainee in Central Crime Branch, Greater Chennai Police, and the same has been registered in Crime No.29 of 2016, under Sections 406 and 506(i) read with Section 34 of the Indian Penal Code and ultimately, requested the detaining authority to invoke Act 14 of 1982 against the detainee.

4. The detaining authority, after considering the nature of offences alleged to have been committed by the detainee, has derived subjective satisfaction to the effect that the detainee is a habitual offender and ultimately branded her 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 son of the detainee, as petitioner.

5. On the side of the respondents, a detailed counter has been filed, wherein it has been contended inter alia to the effect that all the averments made in the petition are false and the detaining authority, after considering the averments made in the affidavit and other connected documents submitted by the sponsoring authority, has rightly branded the detainee as "Goonda", by way of passing the impugned detention order and therefore, the same is not liable to be quashed and altogether, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has attacked the detention order on the following grounds:

(1) As per Act 14 of 1982, the offences alleged to have been committed by the detainee would not come within the definition of 'Goonda' and therefore, the detaining authority, without considering the nature of offences alleged to have been committed by the detainee, has

erroneously branded the detainee as 'Goonda', by way of passing the impugned detention order and therefore, the same is liable to be quashed.

(2) The detaining authority has not properly considered the similar case particulars and therefore, it shows that the detaining authority, without applying his mind properly, has passed the impugned detention order and on that ground also, 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 the detainee is in the habit of collecting huge money on various occasions, from various persons and under the said circumstances, the two adverse cases are pending against her and even in ground case also, it has been specifically alleged to the effect that the detainee has collected a huge amount from various persons and the detaining authority, after considering the nature of offences alleged to have been committed by the detainee and also after considering the materials placed before him, has rightly invoked Act 14 of 1982 against the detainee by way of passing impugned detention order and therefore, the impugned detention order does not call for any interference.

8. It is an admitted fact that against the detainee, two adverse cases are pending. In two adverse cases, the offences punishable under Sections 406 and 420 of the Indian Penal Code are mentioned.

9. It is seen from the records that on 5.2.2016, one Karikalan, son of Masilamani, as defacto complainant, has given a complaint against the detainee in Central Crime Branch, Greater Chennai and the same has been registered in Crime No.29 of 2016, under Sections 406 and 420, along with other Sections of the Indian Penal Code. Therefore, it is quite clear that the detainee is in the habit of committing crimes one after another.

10. Even in the detention order it has been clearly mentioned regarding the details of amounts collected by the detainee from various persons.

11. The first and foremost attack made on the side of the petitioner is that on the basis of offences alleged to have been committed by the detainee, Act 14 of 1982 is not attracted.

12. In fact, this Court has perused the real meaning of 'Goonda', wherein it has been specifically stated that if any

offence or offences, mentioned in Chapter XVII of the Indian Penal Code, are committed, the same would come within the purview of Act 14 of 1982.

13. In the instant case, admittedly, Section 420 of the Indian Penal Code would come within the Chapter XVII of the Indian Penal Code and therefore, it is needless to say that the detaining authority has rightly invoked Act 14 of 1982, on the basis of the offences alleged to have been committed by the detainee.

14. Now the Court has to look into the second ground urged on the side of the detainee.

15. On the basis of the second ground urged on the side of the petitioner, this Court has perused similar case particulars, wherein also offences punishable under Sections 420, 465, 468, 471 read with Section 34 of the Indian Penal Code are involved. Considering the fact that even similar case also very same offences are available, this Court is of the view that the detaining authority has rightly applied his mind for passing the impugned detention order. Therefore, viewing from any angle, the contentions put forth on the side of the petitioner cannot be accepted and altogether, the present petition deserves to be dismissed.

In fine, this habeas corpus petition is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

msk

To

1.The Principal Secretary,
Home, Prohibition,
Fort St.George, Chennai-600 009

2.The Commissioner of Police,
Greater Chennai Police,
Chennai-600 007

3.The Superintendent of Police
Special Prison for Women,
Puzhal, Chennai

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

5.The Public Prosecutor,
High Court, Madras

+1 CC to Mr. S.N. Narasimhan, Advocate Sr.No.55955

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MG (CO)
MD : 28/09/2016



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