

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-09-2016

CORAM:

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

HCP No.525 of 2016

M. Papathi

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Co-operation, Food and Consumer
Protection Department
2nd Floor, Namakkal Kavignar Maligai
Secretariat, Chennai - 600 009

2. The Commissioner of Police
Salem City
Salem

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying to issue writ of habeas corpus calling for the records in connection with the detention order dated 20-01-2016 in C.M.P.No.5/I.T.O./ Salem City/ 2016 on the file of the second respondent herein and set aside the same and direct the respondents to produce the detainee Selvi W/o. Balu @ Balasubramani aged 35 years daughter of the petitioner now confined at Special Prison for Women, Salem and set her at liberty and pass orders.

For Petitioner : Mr. N.A. Ravindran

For Respondents : Mr.V.M.R.Rajendran
Additional 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 detention order dated 20-01-2016 in C.M.P.No.5/I.T.O./ Salem City/ 2016 passed by the second

respondent herein against the detenu by name Selvi W/o. Balu @ Balasubramani by the detaining authority and quash the same.

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

(i) Salem Town AWPS Cr.No.1 of 2016 under Sections 3 (2) (a), 4(2)(c), 5, 6 of Immoral Traffic (Prevention) Act 1956 and 370(A) (2) IPC and 17 r/w 16, 5 and 6 Protection of Children from Sexual Offences Act.

3. Further, it is averred in the affidavit that on 06-01-2016 one Ketharin as defacto complainant has given a complaint against the detenu in Annadanapatty Police Station and the same has been registered in Crime No.10 of 2016 under Sections 3,4, 5, 6 Immoral Traffic (Prevention) Act and 370(A) IPC 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 that the detenu is a habitual offender and ultimately branded him as an 'Immoral Traffic Offender', 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. On the side of the respondents counter has not been filed. Under the said circumstances, this petition is disposed of on merits on the basis of available materials on record.

6. The learned counsel appearing for the petitioner has contended that on the side of the detenu a representation has been submitted and the same has not been disposed of without delay and therefore, the detention order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has represented that the representations submitted on the side of the detenu has been duly disposed of without delay and therefore, the present petition deserves to be dismissed.

8. On the side of the respondents, a proforma has been submitted wherein it is stated that in the representation, in the remarks Column Nos.7 and 8, 10 clear working days are available and in between Column Nos.12 and 13, 14 clear working days are available and no satisfactory explanation has been given on the side of the respondents with regard to huge delay

and that itself would affect the rights of the detenu under Article 22(5) of the Constitution of India and on that ground alone the detention order in question is liable to be quashed.

In fine, the habeas corpus petition is allowed and the detention order dated 20-01-2016 in C.M.P.No.5/I.T.O./Salem City/ 2016 passed by the second respondent is quashed. The respondents are directed to set the detenu by name Selvi W/o. Balu @ Balasubramani, at liberty forthwith, unless she is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

glp

To

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Co-operation, Food and Consumer
Protection Department
2nd Floor, Namakkal Kavignar Maligai
Secretariat, Chennai - 600 009
2. The Commissioner of Police
Salem City.
3. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
4. The Public Prosecutor,
High Court, Madras.
5. The Superintendent,
Special Prison for Women,
Vellore.

H.C.P No.525 of 2016

ALA(CO)
CA(03/10/2016)