

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.574 of 2016

Lakshmi

... Petitioner/Mother of
the Detenu

Vs.

1. The State of Tamil Nadu,
rep.by the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009
2. The Commissioner of Police,
Chennai City,
Veppery,
Chennai-07

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the entire records from the second respondent in connection with order Memo No.06/BCDFGISSSV/2016, dated 08.01.2016 and quash the same and produce the petitioner's son Kutti @ Venkatesan, son of Velayutham, aged about 41 years, now detained in Central Prison, Puzhal, Chennai-66, under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty and quash the detention order.

For Petitioner : Mr.P.K.Ilavarasan

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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 08.01.2016, passed in No.06/BCDFGISSSV/2016, by the detaining authority, who has been arrayed as the second respondent herein, against the detenu by name Kutty @ Venkatesan, Son of Velayudham and quash the same.

2. The Inspector of Police, H8 Thiruvottiyur 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:

H8 Thiruvottiyur Police Station Crime
No.1227 of 2015, under Sections 341, 384 and 506
(ii) of the Indian Penal Code.

3. Further it is averred in the affidavit that on 25.10.2015, one Muneer Basha, son of Jani Basha, as defacto complainant, has given a complaint in H8 Thiruvottiyur Police Station, against the detenu and the same has been registered in Crime No.1369 of 2015 under Section 120B read with Section 302 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 mother of the detenu, 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 materials placed before him, has rightly passed the detention order, by way of branding the detenu as a 'goonda' and the same is not liable to be quashed.

6. The learned counsel appearing for the petitioner has contended that in paragraph No.4 of the detention order, it has been clearly mentioned to the effect that in a similar case, the Principal Sessions Court, Chennai, in CrI.M.P.No.1007 of 2014, has granted bail to the concerned case, by way of passing an order and the same has not been annexed in the booklet for perusal of the detenu. Under such 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 the detaining authority, after considering the materials placed before him, has rightly passed the impugned detention order and the same is not liable to be quashed.

8. On the basis of the representation made on the side of the petitioner, this Court has closely perused the booklet submitted on the side of the respondents, wherein, as rightly pointed out on the side of the petitioner, the order passed in CrI.M.P.No.1007 of 2014 is not annexed and the same would definitely affect the rights of the detenu guaranteed under

Article 226 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 08.01.2016, passed in No.06/BCDFGISSSV/2016, by the detaining authority against the detenu, by name Kutty @ Venkatesan, 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(CS VI)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The Director General of Police,
Chennai 04.
3. The Additional Director General of Police,
Prisons, Chennai 08.
4. The Commissioner of Police,
Chennai City,
Veppery,
Chennai-07
5. The Superintendent of Police
Central Prison, Puzhal, Chennai.
6. The Inspector of Police,
Law and Order,
H 8, Thiruvottiyur Police Station.
7. The Public Prosecutor,
High Court, Madras.

H.C.P.No.574 of 2016

RV(CO)
CA(28/09/2016)