

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.585 of 2016

Vijayakaran

... Petitioner

Vs.

State rep.by

1. The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai 600 009

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

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India for issuing a Writ of Habeas Corpus, to call for the entire records leading to the detention of the petitioner Vijayakaran, aged about 25 years, son of Sankaran, under Act 14 of 1982 vide detention order dated 19.2.2016 on the file of the second respondent herein, made in proceedings No.150/BCDFGISSSV/2016, quash the same as illegal and consequently direct the respondents herein to set the petitioner at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.Subharamaniam

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 the detention order dated 19.2.2016 passed in No.150/BCDFGISSSV/2016 by the detaining authority, who has been

arrayed as the second respondent herein, against the detenu by name Vijayakaran, son of Sankaran and quash the same.

2. The Inspector of Police, Central Crime Branch, Bank Frauds Investigation Wing, Greater Chennai, as sponsoring authority, has submitted an affidavit to the detaining authority, wherein it is averred that one Ashokkumar, Regional Head Fraud Control Unit, Axis Bank, has lodged a complaint against the detenu and others, wherein it has been specifically stated that the detenu and others have fraudulently withdrawn a sum of Rs.43 Lakhs and consequently, a case has been registered in crime No.16 of 2016 under sections 420, 465, 471, r/w 34 of the Indian Penal Code and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

3. The detaining authority, after considering the averments made in the affidavit and other connected documents and also after considering the gravity of the offences alleged to have been committed by the detenu, has 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 detenu himself, as petitioner.

4. On the side of the respondents, counter has been filed, wherein it is averred that 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 the same is not liable to be set aside and therefore, the present petition deserves to be dismissed.

5. The learned counsel appearing for the petitioner has contended to the effect that on 18.3.2016, a representation has been sent to the concerned authority, but the same has not at all been disposed of. Under the said circumstances, the detention order in question is liable to be quashed.

6. Per contra, the learned Additional Public Prosecutor, appearing for the respondents, has contended that no such representation has been received and therefore, the contention put forth on the side of the detenu is liable to be rejected.

7. In fact, on the side of the petitioner/detenu, a copy of the representation dated 18.3.2016 has been submitted, wherein it has been clearly stated that the same has been sent to the concerned Principal Secretary of Tamil Nadu. Further, along with the representation, a courier receipt has also been submitted for the purpose of proving that actually the representation has been sent on 18.3.2016.

8. Considering the materials available on the side of the petitioner/detenu, this Court is of the view that on 18.3.2016, a representation has been sent to the concerned authority and the same has not been disposed of. Since the representation dated 18.3.2016 has not been disposed of, the same would affect his rights guaranteed under Article 22(5) of the Constitution of India and therefore, the detention order in question is liable to be quashed.

9. In fine, this Habeas Corpus Petition is allowed and the detention order dated 19.2.2016 passed in No.150/BCDFGISSSV/2016 by the second respondent is quashed and the respondents are directed to set the detenu, by name Vijayakaran, son of Sankaran at liberty forthwith, unless he is required to be immured in connection with some other cases.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ajr
To

1. The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai 600 009
2. The Commissioner of Police
Greater Chennai
Vepery, Chennai 600 007
3. The Superintendent
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor
High Court, Madras.

+1cc to Mr.Subharamaniam, Advocate, S.R.No.53312

HCP No.585 of 2016

BVR(CO)
CA(20/09/2016)