

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.640 of 2016

Arun

... Petitioner/Brother of
the Detenu

Vs.

1. The Government of Tamilnadu
rep.by its Secretary
Prohibition and Excise Department,
Fort St.George, Chennai 9

2. The District Collector and
District Magistrate
Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus to call for the records relating to the detention order passed by the second respondent in detention order CMP No.5/GOONDA/C2/2016 dated 24.02.2016 and quash the same and consequently to produce the detenu, namely Anand @ Vijay Anand @ Pulsar Anand, son of Palanisamy, aged 27 years before this Hon'ble Court, now he is detained at the Central Prison, Salem and to release and set him at liberty.

For Petitioner : Mr.M.R.Senthil Kumar

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 24.02.2016, passed in CMP.No. 5/GOONDA/C2/2016, by the detaining authority, who has been arrayed as the second respondent herein, against the detenu by name Anand @ Vijay Anand @ Pulsar Anand, son of Palanisamy and quash the same.

2. The Inspector of Police, Mettur 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) Karumalaikoodal Police Station Crime No.910 of 2013, registered under Section 386 of Indian Penal Code

(2) Karumalaikoodal Police Station Crime No.88 of 2014, registered under Sections 294(b), 323, 324, 384 and 506(i) of IPC altered into Sections 294(b), 323, 324, 384 of the Indian Penal Code

3. Further, it is averred in the affidavit that on 1.12.2015, one Gowrilatha, as defacto complainant, has given a complaint against the detenu in Mettur Police Station and the same has been registered in Crime No.768 of 2015 under sections 147, 148 and 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 brother of the detenu, as petitioner.

5. On the side of the respondents, counter has not been filed.

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 appearing for the respondents has contended that the representation submitted on the side of the detenu has been duly disposed of without delay and therefore, the detention order in question need not be quashed.

8. On the side of the respondents, a proforma has been submitted, wherein it has been clearly stated that in between Column Nos.7 to 9, twenty four clear working days are available and in between Column Nos.12 and 13, nine clear working days are available and no explanation has been given on the side of the respondents with regard to such delay 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. The detention order dated 24.02.2016, passed in CMP No.5/GOONDA/C2/2016, by the detaining authority against the detenu, by name Anand @ Vijay Anand @ Pulsar Anand, son of Palanisamy, 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 V)

//True Copy//

Sub Assistant Registrar

ajr

To

1. The Secretary to Government
State of Tamilnadu
Prohibition and Excise Department,
Fort St.George, Chennai 9
2. The District Collector and District Magistrate
Salem District
Salem.
3. The Superintendent
Central Prison
Salem.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

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

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