

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2016

CORAM:

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

H.C.P.No.647 of 2016

Mallika

... Petitioner

Vs.

1. The State of Tamilnadu
rep.by its Secretary to Government
Home, Prohibition and Excise Department,
Chennai 9

2. 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 to call for the records relating to the detenu's detention order passed by the 2nd respondent in his order No.25/2016 dated 27.1.2016 approved by the first respondent and set aside the same and produce the detenu Ilavarasan, aged 28 years, son of Malleeswaran, now detained in Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.N.Ramu

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 27.1.2016, passed in No.25/BCDFGISSV/2016, by the detaining authority, who has been arrayed as the second respondent herein, against the detenu, by name Ilavarasan, son of Malleeswaran and quash the same.

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

(1) T.6 Avadi Police Station Crime No.590 of 2015, registered under Sections 457 and 380 of Indian Penal Code

(2) T.6 Avadi Police Station Crime No.624 of 2015, registered under Sections 457 and 380 of the Indian Penal Code

(3) T.6 Avadi Police Station Crime No.727 of 2015 registered under section 379 of the Indian Penal Code

(4) B.2 Esplanade Police Station Crime No.896 of 2015, registered under Section 392 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 13.1.2016, one Rajapandian, son of Rajendran, as defacto complainant, has given a complaint in Esplanade Police Station against the detenu and the same has been registered in Crime No.34 of 2016 under sections 341, 336, 427, 392 r/w 397 and 506 (ii) 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 wife of the detenu, as petitioner.

5. On the side of the respondents, a counter has been filed, wherein it has been contended to the effect that the averments made in the affidavit are false and ultimately prayed to dismiss the same.

6. The learned counsel appearing for the petitioner has contended that on the side of the detenu, a representation has been given 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 need not be quashed.

8. On the side of the respondents, a proforma has been submitted, wherein it is clearly stated that the remarks have been called for on 5.4.2016 and the concerned authority has sent the remarks on 22.4.2016 and therefore in between Column Nos.7 to 9, eleven clear working days are available and further it is seen from the proforma that in Column Nos.13 and 14, nineteen clear working days are available and no 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 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 27.1.2016, passed in No.25/BCDFGISSV/2016, by the detaining authority against the detenu, by name Ilavarasan, son of Malleeswaran, 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 VII)

//True Copy//

Sub Assistant Registrar

ajr

To

1. The Secretary to Government
State of Tamilnadu
Home, Prohibition and Excise Department,
Chennai 9
2. The Commissioner of Police
Greater Chennai Police
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 District Collector,
Chennai.
6. The Director General of Police,
Chennai 04.
7. The Public Prosecutor,
High Court, Madras.

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AK(CO)
CA(21/09/2016)

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