

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-10-2016

CORAM:

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

HCP No.686 of 2016

Ganapathy

.. Petitioner

Vs.

1. The State of Tamilnadu,
Rep. By its Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai - 600 009
2. The Commissioner of Police,
Chennai Police, Vepery, Chennai-7.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying to issue writ of habeas corpus to call for the entire records leading to the order of Detention of the petitioner's son Thangaraj S/o Ganapathy M/A 25 years has been detained under Act 14/82 as a 'Goonda' vide detention order dated 11.03.16 on the file of the 2nd respondent herein, made in Memo No.289/BCDFGISSSV/2016 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr. M.Rajavelu

For Respondents: Mr.V.M.R.Rajendran
Addl.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 11.03.2016 in No.289/BCDFGISSSV/2016 passed by the detaining authority, who has been arrayed as the second respondent herein against the

detenu by name Thangaraj, S/o.Ganapathy and quash the same.

2. The Inspector of Police, Law & Order, E1 Mylapore 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)E1 Mylapore Police Station Crime No.3369 of 2015 under Section 379 IPC.

(ii)E1 Mylapore Police Station Crime No.163 of 2016 under Section 379 IPC.

(iii)E1 Mylapore Police Station Crime No.167 of 2016 under Section 379 IPC.

3. Further, it is averred in the affidavit that on 29-01-2016 one Daniel Jayaraj as defacto complainant has given a complaint against the detenu in E1 Mylapore Police Station and the same has been registered in Crime No.185 of 2016 under Sections 341, 294(b), 323, 397, 336 and 506 (ii) 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 professional 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 father 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 two representations have been submitted and the same have 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 have 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 respect of the first representation, in the remarks Column between Nos.7 and 9, 9 clear working days are available and in between Column

Nos.12 and 13, 16 clear working days are available and in respect of second representation, in the remarks Column between Nos.7 and 9, 24 clear working days are available and in between Column Nos.12 and 13, 3 clear working days are available and no satisfactory explanation has been given on the side of the respondents with regard to delay in disposing of the representations submitted on the side of the detenu 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 11.03.2016 in No.289/BCDFGISSSV/2016 passed by the second respondent is quashed. The respondents are directed to set the detenu by name Thangaraj S/o. Ganapathy, at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Secretary to Government of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai - 600 009
2. The Commissioner of Police,
Chennai Police, Vepery, Chennai-7.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.

HCP No.686 of 2016

ctk co
kra 03.10.2016