

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.86 of 2016

Kaliyan @ Kumar @ Senthilkumar ... Petitioner/Detenu

vs.

1. The State of Tamilnadu
rep.by its Secretary to Government
Prohibition and Excise Department,
Fort St.George, Chennai 9
- 2.The District Collector and District Magistrate
Salem District
Salem ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records relevant to the order passed by the second respondent in his proceedings CMP No.41/GOONDA/C2/2015 dated 7.10.2015 and quash the same and produce the detenu Kaliyan @ Kumar @ Senthilkumar, aged about 29 years, S/o.Murugesan, who is now detained at Central Prison, Salem before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Selvathirumurguan

For Respondents:Mr.,V.M.R.Rajentren, APP

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 7.10.2015, passed in CMP.No. 41/GOONDA/C2/2015, by the detaining authority, who has been arrayed as the second respondent herein, against the detenu, by name Kaliyan @ Kumar @ Senthilkumar, son of Murugesan 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) Salem District Karippatti Police Station Crime No.154 of 2010, registered under Section 394 of Indian Penal Code

(2) Tiruppur District Vellakoil Police Station Crime No.2800 of 2010, registered under Sections 147, 341, 364(A), 342, 323 and 395 of the Indian Penal Code

(3) Salem District Mettur Police Station Crime No.105 of 2011 registered under sections 147, 148 and 302 of the Indian Penal Code

(4) Salem City Hasthampatti Police Station Crime No.767 of 2011, registered under Section 392 of the Indian Penal Code.

(5) Salem City Mettur Police Station Crime No.582 of 2011, registered under Sections 302 and 201 of the Indian Penal Code.

(6) Salem City Hasthampatti Police Station Crime No.877 of 2011, registered under Sections 387 and 506(ii) of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 18.5.2015, one Govindammal, wife of Palanisamy, as defacto complainant, has given a complaint against the detenu in Mettur Police Station and the same has been registered in Crime No.335 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 detenu himself, as petitioner.

5. On the side of the respondents, a detailed counter has been filed, wherein it is averred to the effect that the detaining authority after considering the averments made in the affidavit submitted by the sponsoring authority and other connected documents, has rightly invoked Act 14 of 1982 against the detenu and therefore, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner/detenu has contended that on the side of the petitioner/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 given

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, fourteen clear working days are available and in between Column Nos.12 and 13, sixteen clear working days are available and no explanation has been given on the side of the respondents with regard to such 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 7.10.2015, passed in CMP No.41/GOONDA/C2/2015, by the detaining authority against the detenu, by name Kaliyan @ Kumar @ Senthilkumar, son of Murugesan, 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

ajr

To

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

7. The Inspector of Police,
Mettur Police Station,
Mettur.

1 cc to Mr.S.Selvathirumurugan, Advocate, sr.55323

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