

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

H.C.P.No.876 of 2016

Saravanan

... Petitioner

vs.

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

2. The District Collector & District Magistrate
Kancheepuram District
Kancheepuram ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records in relating to the detention order passed by the second respondent in BCDFGISSSV No.33/2016 dated 13-04-2016 under Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondents to produce the petitioner's friend Suresh @ Kulithalai Suresh son of Azhagurajaperumal aged about 37 years now detained in Central Prison, Vellore.

For Petitioner : Mr. K. Gandhikumar

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 13-04-2016, passed in BCDFGISSSV No.33/2016, by the detaining authority, who has been arrayed as the second respondent herein, against the detenu, by name Suresh @ Kulithalai Suresh S/o. Alagurajaperumal and quash the same.

2. The Inspector of Police, Prohibition and Enforcement Wing, 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) Prohibition Enforcement Wing, Gopichettipalayam, Cr.No.861 of 2015 under Sections 4(1)(aaa) r/w 4(1-A), 4(1)(i), (b), (g) (h) Tamil Nadu Prohibition Act r/w 5,6,7 of Tamil Nadu Rectified Spirit Rules 2000 and 420, 467, 468, 471 IPC.

(2) Prohibition Enforcement Wing, Vellore , Cr.No.81 of 2016 under Sections 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act and 468, 471, 420 IPC r/w 7 of Tamil Nadu Rectified Spirit Rules 2000.

3. Further, it is averred in the affidavit that on 19-03-2016,, on information, the Inspector of Police, Prohibition Enforcement Wing, Kancheepuram has inspected the Vehicle and ultimately found illegal arrack and consequently, the same has been registered in Crime No.106 of 2016 against the detenu under Sections 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act r/w 7 and 11 of Rectified Spirit Rules 2000 (Transporting) and 468, 471, 420 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 to the effect that the detenu is a habitual offender and ultimately branded him as a 'Bootlegger' by way of passing the impugned detention order and in order to quash the same, the present petition has been filed by the friend of the detenu, as petitioner.

5. On the side of the respondents, a counter has been filed, wherein it has been contended inter alia to the effect that all the averments made in the affidavit are false and the detaining authority after considering the materials placed before him has rightly branded the detenu as "Bootlegger" and therefore, the present petition deserves to be dismissed.

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 given on the side of the detenu has been duly disposed of without delay and therefore, the present petition deserves to be dismissed.

8. On the side of the respondents, a proforma has been submitted, wherein it has been clearly stated that the remarks have been called for on 25-05-2016. But the same has been received on 08-06-2016. Likewise the concerned file has been

sent to Deputy Secretary on 09-06-2016 and the same has reached the concerned Minister on 29-06-2016. Therefore, it is quite clear that in between Column No.7 to 9 and 12 and 13 a vast delay has occurred and the same has not been explained on the side of the respondents and the same 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 13-04-2016, passed in BCDFGISSSV No.33/2016, by the detaining authority against the detenu, by name Suresh @ Kulithalai Suresh son of Azhagurajaperumal 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

glp

To

1. The Secretary
Home, Prohibition and Excise Department,
Fort St.George, Chennai 9
2. The Commissioner of Police
Kancheepuram
3. The Public Prosecutor,
High Court, Madras
4. The District Collector of District Magistrate
Kancheepuram District Kancheepuram
5. The Superintendent Central Prison, Vellore
6. The Joint Secretary to Government
Public Law and order fort st.george chennai-9

H.C.P.No.876 of 2016

aa20/09/2016