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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

HABEAS CORPUS PETITION (MD) No.1801 of 2015

Sabaniya Begum

.. Petitioner

Vs.

1.The Secretary to the Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi - 110 001.

2.The Secretary to Government (Tamil Nadu),
Public (Law and Order-F) Department,
Secretariat,
Fort St. George,
Chennai - 9.

3.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

4.The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

.. Respondents

Prayer:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus praying to call for the entire records connected with the detention order in P.D.No.03-N.S.A/2015 dated 10.12.2015 on the file of the respondent No.3 and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Asraff Ali @ Asraff @ Umar, son of Noortheen, aged 32 years now confined at Central Prison, Palayamkottai, Tirunelveli District before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.M.A.Jinnah

For R - 1 : M/s.L.Victoria Gowri

For RR 2 to 4 : Mr.C.Ramesh
Additional Public Prosecutor

ORDER

(Order of the Court was made by A.SELVAM, J)



order passed in P.D.No.03-N.S.A/2015 dated 10.12.2015 by the detaining authority, who has been arrayed as third respondent herein, against the detenu by name Asraff Ali @ Asraff @ Umar and quash the same.

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

(i) Crime No.6 of 2015 Kottar Police Station registered under Sections 341, 294(b), 307, 506(ii) altered into Sections 341, 294(b), 307, 506(ii), 120(b) and 153(A) of the Indian Penal Code.

(ii) Crime No.382 of 2015 Colachel Police Station registered under Section 307 altered into Sections 147, 148, 120(b), 153(A) and 307 of the Indian Penal Code.

(iii) Crime No.160 of 2015 Eruvadi Police Station registered under Sections 364, 342 and 307 of the Indian Penal Code.

3. Further it is stated in the affidavit that on 11.04.2014 one Rajaram as defacto complainant has given a complaint to the Inspector of Police, Kottar Police Station and the same has been registered against the detenu in Crime No.328 of 2014 under Section 307 of the Indian Penal Code and also under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 and ultimately requested to invoke National Security Act against the detenu.

4. The detaining authority, after considering the material averments made in the affidavit and other connected documents, has derived subjective satisfaction to the effect that the act of the detenu has caused prejudice to the maintenance of public order and tranquility and ultimately invoked National Security Act against the detenu by way of passing the impugned detention order and in order to quash the same, the present petition has been filed.

5. On the side of the respondents 2 to 4, a detailed counter has been filed wherein it has been contended *inter alia* to the effect that the detaining authority has rightly passed the impugned detention order and therefore, the same is not liable to be quashed.

6. On the side of the first respondent, counter has not been filed.

7. The learned counsel appearing for the petitioner has contended that a representation has been sent to the concerned authority and the same has been received on 29.12.2015 and remarks have been called for on 30.12.2015. Since remarks have not been received, reminder has been issued on 12.01.2016. Under the said circumstances, there is a delay in disposing of the representation which would cause prejudice to the detenu and therefore the order of detention is liable to be quashed.



8. The learned Additional Public Prosecutor appearing for the respondents 2 to 4 has contended that there is no delay in disposing of the representation. Under the said circumstances, the impugned detention order passed by the detaining authority need not be quashed.

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9. On the side of the respondents 2 to 4, a proforma has been submitted wherein, it has been clearly stated that the remarks have been called for on 30.12.2015 and reminder has been issued on 12.01.2016. But on the side of the respondents 2 to 4, no explanation has been given with regard to such delay. Under the said circumstances, the detention order in question is liable to be quashed.

10. In fine, this Habeas Corpus Petition is allowed and the detention order passed in P.D.No.03-N.S.A/2015 dated 10.12.2015 by the third respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., Asraff Ali @ Asraff @ Umar, son of Noortheen at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/

Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar(C.S)
Madurai Bench of Madras High Court,
Madurai.

To

- 1.The Secretary to the Government of India,
Ministry of Home Affairs, Department of Internal Security,
North Block, New Delhi - 110 001.
- 2.The Secretary to Government (Tamil Nadu),
Public (Law and Order-F) Department,
Secretariat, Fort St. George, Chennai - 9.
- 3.The District Collector and District Magistrate,
Kanniyakumari District, Nagercoil.
- 4.The Inspector of Police, Kottar Police Station, Kanyakumari District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
6. The Superintendent of Central Prison, Palayamkottai, Tirunelveli
(duplicate copy to communicate to the detenu)
+1cc to M/S.S.M.A.Jinnah, Advocate in SR.No.12888
+1cc to M/S.L.Victoria Gowri, Advocate in SR.No.12570

ORDER MADE IN
H.C.P (MD) No.1801 of 2015
04.03.2016