

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.09.2017

CORAM

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

H.C.P.No.1010 of 2017

D.Gopi

.. Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

2.The Commissioner of Police,
Greater Chennai Police.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records in connection with the order of detention passed by the 2nd respondent dated 07.06.2017 in Memo No.329/BCDFGISSSV/2017 against the petitioner's friend Umar @ Umar Basha, aged 26 years, S/o.Ajeez, who is confined at Central Prison, Puzhal-II, Chennai and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel
For Respondents : Mr.V.M.R.Rajentren,
Additional 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 the detention order passed in No.329/BCDFGISSSV/2017 dated 07.06.2017 by the Detaining Authority against the detenu by name, Umar @ Umar Basha, aged 26 years, S/o.Ajeez, residing at No.17/30, Kamala Nagar 1st Street, Periyar Nagar, Thiruvotriyur, Chennai-19 and quash the same.

2. The Inspector of Police, K-6, T.P.Chatram Police Station as Sponsoring Authority has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detenu has involved in the following adverse case :

i. K-6 T.P.Chatram Police Station Crime No.166/2017 registered under Sections 147, 148, 449, 452, 506[ii], 307, 302 r/w 120[b] of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 05.02.2017, one Sekar, aged 45 years, S/o.Murugan, residing at No.12, Kathiravan Colony 8th Street, Aminjikarai, Chennai-29, as de facto complainant has given a complaint against the detenu and another, wherein, it is alleged to the effect that in the place of occurrence, the detenu and another have illegally detained the de facto complainant by using filthy words and also by way of showing knife, they snatched a sum of Rs.2,300/- and a mobile phone and at the said circumstances, a case has been registered in Crime No.181/2017 under Sections 341, 294[b], 336, 427, 392, 397 and 506[iii] of the Indian Penal Code and also under Section 3 of TNPPDL Act and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

4. The Detaining Authority after perusing the averments made in the affidavit and other connected documents, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him as goonda by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by a friend of the detenu as petitioner.

5. In the counter filed on the side of the respondents, it is averred to the effect that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the relevant materials to the Detaining Authority. The Detaining Authority after perusing all the material records, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, passed the impugned Detention Order and the same does not require interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, three representations are submitted, but the same have not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. Learned Additional Public Prosecutor has submitted that the representations submitted on the side of the detenu have been duly disposed of without delay and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

8. On the side of the respondents, a proforma has been

submitted, wherein, it is clearly stated that in respect of 2nd representation, in between column Nos.7 to 9, 3 clear working days are available. Likewise, in respect of 3rd representation, in between column Nos.7 to 9, 3 clear working days are available and in between column Nos.12 and 13, 17 clear working days are available and no explanation has been given on the side of the respondents with regard to such huge delay 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.

9. In fine, this petition is allowed. The Detention Order dated 07.06.2017 passed in No.329/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Umar @ Umar Basha, aged 26 years, S/o.Ajeez, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

2.The Commissioner of Police,
Greater Chennai Police.

3.The Superintendent,
Central Prison, Puzhal-II, Chennai.
[in duplicate for communication to the detenu]

4.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1010 of 2017

KJI (CO)
GN(20/09/2017)