

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE M.DHANDAPANI

H.C.P.No.1042 of 2017

Banalata Kosh

.. Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
O/o.The Commissionerate,
Vepery, Chennai-7.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records relating to the detention order passed by the 2nd respondent herein made in No.261/BCDFGISSSV/2017 dated 11.05.2017 on the file of the 2nd respondent herein and quash the same as illegal and direct the respondents to produce the detenu viz., Sanjeev Kosh @ Sanjeev Bai, aged 35 years, S/o.Arjun Kosh, residing at No.14, Konnagar, Ghatal, West Midnapore, West Bengal 721212, now confined in Central Prison, Puzhal, Chennai as a remand prisoner, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Mohanan

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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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.261/BCDFGISSSV/2017 dated 11.05.2017 by the Detaining Authority against the detenu by name, Sanjeev Kosh @ Sanjeev Bai, aged 35 years, S/o.Arjun

Kosh, residing at No.21-6, Selapuda, Hyderabad and quash the same.

2. The Inspector of Police, Anti Vice Squad Police Station, Egmore 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 cases :

- i. Anti Vice Squad-I Crime No.38/2017 registered under Sections 3[2]a, 4[1] and 5[1]a of ITP Act.
- ii. Anti Vice Squad-I Crime No.39/2017 registered under Sections 3[2]a, 4[1], 5[1]a, 6[1] and 7[a] of ITP Act.

3. Further, it is averred in the affidavit that on 24.03.2017, as per directions given by the superiors, one Arputham, Gr-I PC 28391, has watched prostitution business in Egmore area. At that time, the detenu has approached him and also demanded him a sum of Rs.3,000/- for having sexual intercourse with a lady and consequently, a case has been registered in Crime No.44/2017 under Sections 3[2]a, 4[1], 5[1]a of ITP 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 immoral traffic offender by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the wife 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 supplied all the relevant materials to the Detaining Authority. The Detaining Authority after perusing all the materials, 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 suffer from any infirmity and therefore, the present petition is liable to be dismissed.

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

7. Learned Additional Public Prosecutor has contended that the representation submitted on the side of the detenu has been disposed of without delay and therefore, the contention urged 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 between column Nos.7 and 9, 4 clear working days are available and in between column Nos.12 and 13, 12 clear working days are available and no explanation has been given on the side of the respondents with regard to such 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 11.05.2017 passed in No.261/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Sanjeev Kosh @ Sanjeev Bai, aged 35 years, S/o.Arjun Kosh, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

3.The Commissioner of Police,
O/o.The Commissionerate,
Vepery, Chennai-7.

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1042 of 2017

SK(CO)
GN(14/09/2017)