

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.09.2017

CORAM

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

H.C.P.No.1048 of 2017

Rekha M.Jain

.. Petitioner

Vs

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

2.The Commissioner of Police,
Greater Chennai
Office of Commissioner of Police
Vepery, Chennai - 600 007

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records relating to the Detention Order No.350/BCDFGISSSV/2017 dated 17.06.2017 passed by the second respondent under Tamil Nadu At 14/1982 and quash the same and direct the respondent to produce the detenu Mohan Kumar, aged about 57 years, son of Shesmal, now confined in Central Prison, Puzhal before this Court and set the detenu at liberty.

For Petitioner : Mr.N.R.Elango
Senior Counsel
for Mr.A.Damodaran

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 Memo No.350/BCDFGISSSV/2017 dated 17.06.2017 by the Detaining Authority against the detenu by name, Mohan Kumar, aged 57 years, S/o.Seshmal, residing at No.18, Hunters Road, Choolai, Chennai-112 and quash the same.

2. The Inspector of Police, Central Crime Branch, 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) Central Crime Branch, Crime No.446 of 2009, registered under Sections 420, 506(ii) r/w.34 IPC and Sec.3 and 4 of TNPCE Interest Act, 2003; and

ii) Central Crime Branch, Crime No.179 of 2017, registered under Section 420 r/w.506(i) of Indian Penal Code.

3. Further it is averred in the affidavit that on 25.05.2017, one Balasubramanian, S/o.Sundaram Pillai, residing at 16-A, Rajarathinam Street, Kilpauk, Chennai 10, as defacto complainant, has given a complaint wherein it is averred that the defacto complainant has borrowed a sum of Rs. 1,50,00,000/- and paid a sum of Rs.3,67,91,489/- and even after receipt of the same, the detenu and his henchmen have demanded more money and also threatened him. Under such circumstances, a case has been registered in CCB Crime No.164 of 2017 under Sections 406, 420, 506(i) of Indian Penal Code and Section 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 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 derived 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 the friend of the detenu as petitioner.

5. On the side of the respondents, counter has been filed, wherein, 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 considering all the relevant materials and other connected papers, has arrived at a subjective satisfaction to the effect that the detenu is habitual offender and ultimately, branded him as "Goonda" and the same does not call for any 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, two representations are submitted, but the same have not 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 representations submitted on the side of the detenu are duly 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 respect of first representation, in between column Nos.7 to 9, 4 clear working days are available. Likewise, in respect of second representation, in between column Nos. 7 and 9, 4 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 17.06.2017 passed in Memo No.350/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Mohankumar, aged 57 years, S/o.Seshmal 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 VI)

//True Copy//

Sub Assistant Registrar

gpa

To

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

2. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat
Chennai- 600 009

3.The Commissioner of Police,
Greater Chennai Police
Vepery, Chennai - 600 007

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

5.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.A.Damodaran Advocate sr 6430

H.C.P.No.1048 of 2017

br(co)
aa06/09/2017



WEB COPY