

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.1112 of 2017

Mrs.S.Vijayalakshmi

.. Petitioner

Vs

1.The State Rep. By its
Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai - 600 009

2. The District Collector and District Magistrate
Kancheepuram District
Kancheepuram

3. The State rep. By its
Inspector of Police
Otteri Police Station
Kancheepuram District

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records of the second respondent in BCDFGISSSV No.19/2017 dated 07.03.2017 and quash the same and thereby direct the respondents to produce the husband of the petitioner, namely Surya @ Nedunkundram Surya, S/o.Kutty, aged about 28 years (Detenu), now detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Ms.Geetha Ravikumar

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 the records relating to the detention order passed in B.C.D.F.G.I.S.S.S.V No.19 of 2017 dated 07.03.2017, against the detenu by name, Surya @ Nedunkundram Surya, aged 28 years, S/o.Kutty, residing at 139/3, Gandhi Road, Nedunkundram, Chennai- 600 127 and quash the same.

2. The Inspector of Police, Otteri 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 cases:

i) Otteri Police Station, Crime No.671 of 2016, registered under Sections 120-B, 147, 148, 302 of the Indian Penal Code r/w.Section 3 and 6 of the Explosive Substances Act, 1906; and

ii) Otteri Police Station, Crime No.673 of 2016, registered under Sections 147, 148, 294(b), 506(ii) of the Indian Penal Code r/w.Section 3 (i) of TNP(PDL) Act, 1992.

3. Further it is averred in the affidavit that on 02.02.2017, One Sakthivel, aged 49 years, S/o.Viswanathan, residing at Pasumathoor Village, as defacto complainant, has given a complaint in K.V.Kuppam Police Station, against the detenu and another wherein it is alleged to the effect that in the place of occurrence, the detenu and another illegally detained the defacto complainant and forcibly taken away a sum of Rs.1000/- from his custody by showing a knife. Under such circumstances, a case has been registered in Crime No.24 of 2017 under Sections 341, 294(b), 397 and 506(ii) of Indian Penal Code 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 wife of the detenu, as petitioner.

5. On the side of the respondents, counter has not been filed. Under such circumstance, this petition is disposed of on merits on the basis of available materials on record.

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

7. Per contra, the learned Additional Public Prosecutor has contended to the effect that the representation submitted on the side of the detenu has been duly disposed of without delay and therefore, the contention put forth on the side of the detenu is liable to be rejected.

8. On the side of the respondents, a proforma has been submitted, wherein, it has been clearly stated that in between column Nos.7 and 9, 6 clear working days are available and in between column Nos.12 and 13, 13 clear working days are available and no explanation has been given on the side of the respondents with regard to such delay and that the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India.

9. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 07.03.2017 passed in B.C.D.F.G.I.S.S.S.V No.19 of 2017 by the Detaining Authority against the detenu by name, Surya @ Nedunkundram Surya, aged 28 years, S/o.Kutty, 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)

***Corrected order as per the
order dated 20/09/2017**

-s/d-

Sub Assistant Registrar

dt 22/09/2017

//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 Government
Home, Prohibition and Excise Department
Secretariat
Chennai - 600 009

To be Substituted to
the order already
despatched on
21/09/2017

3. The District Collector and District Magistrate
***Kancheepuram District**
Kancheepuram

4.The Inspector of Police
Otteri Police Station
Kancheepuram District

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

6.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1112 of 2017

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