

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.1229 of 2017

Sakthivel

.. 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,
Greater Chennai.

... 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 2nd respondent made in the detention order BCDFGISSSV No.150/2017 dated 10.04.2017 and quash the same and direct the respondents to produce the detenu viz., Sakthivel, aged 34 years, S/o.Kaliyaperumal, now undergoing detention in Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.V.Sridharan

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 BCDFGISSSV No.150/2017 dated 10.04.2017 by the Detaining Authority against the detenu by name, Sakthivel, aged 34 years, S/o.Kaliyaperumal, residing at No.565, D-Block, Seniamman Koil Street, Tondiarpet, Chennai and quash the same.

2. The Inspector of Police, R-9 Valasaravakkam 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. R-9 Valasaravakkam Police Station Crime No.578/2016 registered under Section 392 of the Indian Penal Code.
- ii. R-9 Valasaravakkam Police Station Crime No.750/2016 registered under Sections 461, 380 and 511 of the Indian Penal Code.
- iii. R-9 Valasaravakkam Police Station Crime No.813/2016 registered under Section 379 of the Indian Penal Code.
- iv. R-9 Valasaravakkam Police Station Crime No.937/2016 registered under Section 379 of the Indian Penal Code.
- v. R-9 Valasaravakkam Police Station Crime No.1130/2016 registered under Section 392 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 30.12.2016, one Gunasekaran, aged 49 years, S/o.Ramalinga Nadar, residing at No.67, Anjaneyar Koil Street, Kamakodi Nagar West, Valasaravakkam, Chennai-87, as de facto complainant has given a complaint in R-9 Valasaravakkam Police Station, wherein, it is alleged to the effect that in the place of occurrence, the detenu and others have unlawfully detained the de facto complainant and forcibly taken away a sum of Rs.1,300/- and a cellphone from him by showing a knife. Under such circumstances, a case has been registered in Crime No.1278/2016 under Sections 341, 294[b], 336, 427, 397 and 506[ii] of the Indian Penal Code and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

4. The Detaining Authority after considering 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 the detenu himself as petitioner.

5. On the side of the respondents, counter has not been filed and therefore, the present Habeas Corpus Petition is disposed of on merits on the basis of available materials on record.

6. Learned counsel appearing for the petitioner/detenu has raised the following points :

- i. The Detention Order has been passed on 10.04.2017, whereas, a copy of the grounds of detention has been served to the detenu on 16.04.2017 i.e., beyond five days.
- ii. The detenu has been served with a booklet, wherein, at page No.375, a copy of the FIR is available, but the same

is not readable. Likewise, at page No.391, copy of Form-95 is available and at page No.407, copy of the remand extension order is available and both the documents are not readable.

7. Learned Additional Public Prosecutor has represented that the Detention Order has been passed on 10.04.2017 and a copy of the same has been duly served to the detenu and further in the booklet, all the copies of documents are legible and therefore, the contentions put forth on the side of the detenu/petitioner are liable to be rejected.

8. In fact, it is seen from the records that the Detention Order in question has been passed on 10.04.2017. But, a copy of the same has been served on 16.04.2017. Absolutely, there is no explanation on the side of the respondents with regard to such delay. As rightly pointed out on the side of the petitioner, all copies of vital documents which are available in the booklet are not readable 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 10.04.2017 passed in BCDFGISSSV No.150/2017 by the Detaining Authority against the detenu by name, Sakthivel, aged 34 years, S/o.Kaliyaperumal is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. 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,
Greater Chennai.

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.1229 of 2017

PA (CO)
NR 20/09/2017



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