

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2017

CORAM

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

H.C.P.No.1322 of 2017

Sathiya

.. Petitioner

Vs

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

2.The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.

.. 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 second respondent dated 26.10.2016 in BCDFGISSSV No.61/2016 against the petitioner's brother Venkatesh, aged 29 years, S/o.Gajendran, who is confined at Central Prison, Vellore 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 BCDFGISSSV No.61/2016 dated 26.10.2016 by the Detaining Authority against the detenu by name, Venkatesh, aged 29 years, S/o.Gajendran, residing at Odai Street, Molachur Village, Sunguvarchatram Post, Sriperumbudur Taluk, Kancheepuram District and quash the same.

2. The Inspector of Police, Kanchi Taluk 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. Kanchi Taluk Police Station Crime No.1039/2015 registered under Section 394 of the Indian Penal Code.
- ii. Sunguvarchatram Police Station Crime No.109/2016 registered under Sections 457 and 380 r/w 34 of the Indian Penal Code.
- iii. Kanchi Taluk Police Station Crime No.809/2016 registered under Sections 392 and 397 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 21.09.2016, one Loganathan, S/o.Sanjeevi, residing at Mariyamman Koil Street, Thimmasamudram Village, Kancheepuram Taluk, as de facto complainant has given a complaint in Kanchi Taluk Police Station, wherein, it is stated to the effect that on the same day at about 9.00 p.m., the detenu and another have forcibly taken away a sum of Rs.420/- from the de facto complainant by showing a knife and also scolded him by using filthy words. Under the said circumstances, a case has been registered in Crime No.816/2016 under Sections 294[b], 323, 307, 397 and 506 [ii] of the Indian Penal Code and Section 3[i] of TNPPDL Act, 1992, 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 to 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 sister of the detenu as petitioner.

5. On the side of the respondents, counter has not been filed. Under the said circumstances, this Habeas Corpus Petition has been disposed of on merits on the basis of available materials on record.

6. Learned counsel appearing for the petitioner has contended to the effect that against the detenu, third adverse case has been registered in Crime No.809/2016 on the file of Kanchi Taluk Police Station. In the Detention Order, it has been specifically stated that the detenu has been arrested on 22.09.2016, whereas in the ground case also, he has been arrested on the same day. But, in paragraph No.5 of the Detention Order, no mentioning has been made with regard to the arrest alleged to have been made in the third adverse case and therefore, the detaining authority has not applied his mind properly. Under the said circumstances, the Detention Order in question is liable to be quashed.

7. Learned Additional Public Prosecutor has contended that

the Sponsoring Authority has submitted all the relevant material records to the Detaining Authority. The Detaining Authority after perusing all the relevant materials and other connected papers, has rightly derived to a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, passed the impugned Detention Order and further, in the grounds of detention, it has been clearly mentioned that the occurrence mentioned in the ground case has occurred on 21.09.2016 and in pursuance of the complaint alleged to have been given by the de facto complainant, the detenu has been arrested on 22.09.2016. The Detaining Authority after considering all the relevant materials has rightly passed the impugned Detention Order and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

8. It is seen from the records that the occurrence mentioned in the third adverse case has happened on 19.09.2016. Likewise in the ground case, the occurrence is said to have been taken place on 21.09.2016. Further, it is seen from the grounds of detention, that in pursuance of the complaint alleged to have been given by the de facto complainant in respect of the ground case, the detenu has been arrested on 22.09.2016 and subsequently, remanded to custody.

9. As adverted to earlier, in the third adverse case, the detenu has been arrested on 22.09.2016. In fact, this court has analysed the entire grounds of detention and ultimately, found that no mention has been made as to how, the detenu has been arrested in connection with the third adverse case. In the Detention Order, it has been simply stated that in the third adverse case, the detenu has been arrested and remanded to custody on 22.09.2016. Therefore, it goes without saying that the Detaining Authority has not applied his mind properly in passing impugned Detention Order and that itself can be a sole cause for quashing the same.

10. In fine, this petition is allowed. The Detention Order dated 26.10.2016 passed in BCDFGISSSV No.61/2016 by the Detaining Authority against the detenu by name, Venkatesh, aged 29 years, S/o.Gajendran is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gya

To

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

2.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

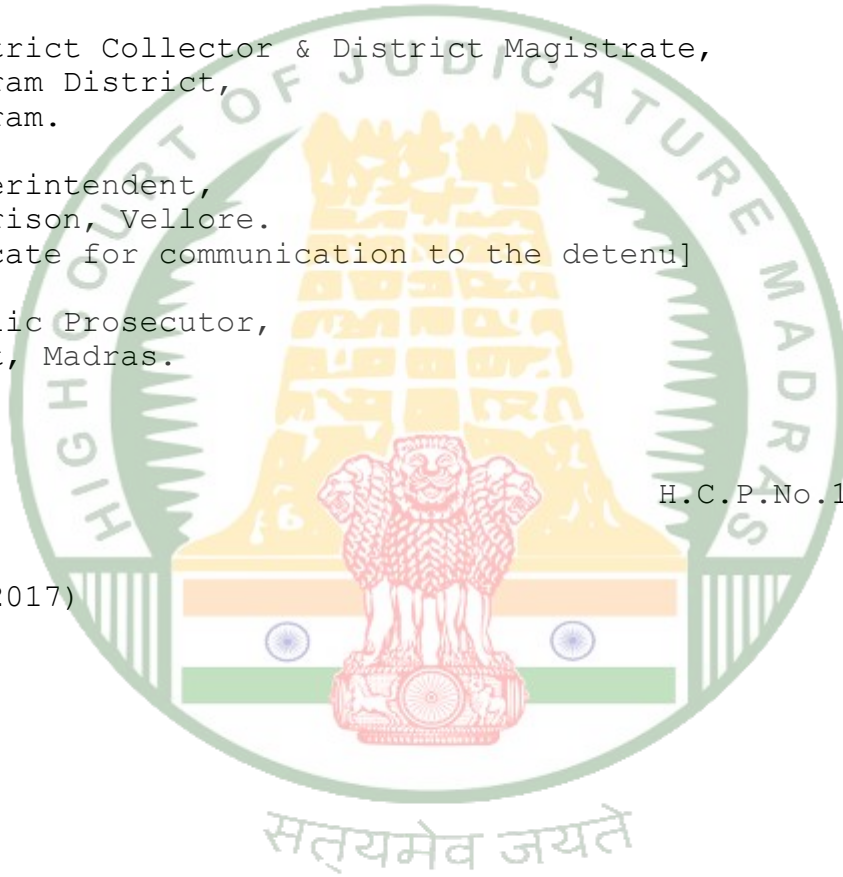
3.The District Collector & District Magistrate,
Kancheepuram District,
Kancheepuram.

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1322 of 2017

GN(04/09/2017)



WEB COPY