

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM

and

THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

H.C.P.No.1384 of 2017

N.Velusamy

.. Petitioner

Vs

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

2.The District Collector & District Magistrate
Erode District, Erode .. 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 connected with the order of the 2nd respondent dated 28.01.2017 passed in Cr.M.P.No.03/GOONDA/2017 C1 against the detenu Prakash, aged 26 years, S/o. Velusamy, who is confined at Central Prison, Coimbatore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Parthiban
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 Cr.M.P.No.03/GOONDA/2017 C1 dated 28.01.2017 by the Detaining Authority against the detenu by name, Prakash, aged 26 years, S/o.Velusamy, residing at Door No.306, Kottai Vinayagar Kovil Street, Chokkaramman Nagar, Bhavani, Bhavani Taluk, Erode District and quash the same.

2. The Inspector of Police, Bhavani 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) Erode District, Bhavani Police Station, Crime No.371 of 2015, registered under Sections 294(b), 447, 427 and 506(ii) of Indian Penal Code, altered into Sections 341, 294(b), 447 and 352 of Indian Penal Code; and

ii) Erode District, Bhavani Police Station, Crime No.740 of 2015, registered under Sections 387 of Indian Penal Code.

3. Further it is averred in the affidavit that on 20.12.2016, Sub-Inspector of Police, Bhavani Police Station, has received an information from the Government Hospital to the effect that one Sasi alias Sasikumar has been admitted in hospital with cut injuries and subsequently referred to Head Quarters Hospital, Erode, where he succumbed to injuries. The Sub-Inspector of Police, has recorded a statement from one Kannan, S/o.Marasamy wherein it is stated to the effect that in the place of occurrence, the detenu has attacked the deceased Sasi @ Sasikumar by using a deadly weapon. Under such circumstance, a case has been registered in Crime No.702/2016 under Sections 302 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 father of the detenu as petitioner.

5. Despite repeated adjournments, counter has not been filed. Under such circumstance, this Habeas Corpus Petition is disposed of on merits on the basis of available material records.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, two representations are submitted and the same have 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 representations submitted on the side of the detenu are duly disposed of without delay and under said circumstances, 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 has been clearly stated that in respect of first representation, in between column Nos.7 and 9, 9 clear working days are available and in between column Nos.12 and 13,

38 clear working days are available. Likewise, in respect of second representation, in between column Nos.7 and 9, 9 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 28.01.2017 passed in Cr.M.P.No.03/GOONDA/2017 C1 by the Detaining Authority against the detenu by name, Prakash, aged 26 years, S/o.Velusamy, residing at Door No.306, Kottai Vinayagar Kovil Street, Chokkaramman Nagar, Bhavani, Bhavani Taluk, Erode District, 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 V)

//True Copy//

Sub Assistant Registrar

gpa

To

- 1.The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
- 2.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
- 3.The District Collector & District Magistrate,
Erode District, Erode.
- 4.The Superintendent
Central Prison, Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.1384 of 2017

GN(29/08/2017)