

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2017

CORAM

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

H.C.P.No.1418 of 2017 and
Crl.MP.No.9767 of 2017

Madhaiyan

.. Petitioner

Vs

1.State Rep. By
The Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai -9.

2.The Commissioner of Police
Salem City, Salem.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for records in C.M.P.No.55/GOONDA/SALEM CITY/2017 dated 17.07.2017 on the file of the Commissioner of Police, Salem City, Salem and quash the same as illegal and direct the respondent to produce the detenue Valarmathi D/o Madhaiyan, aged about 23 years now confined at Special Prison for Women at Coimbatore and set her at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.V.M.R.Rajentran
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 C.M.P.No.55/GOONDA/SALEM CITY/2017, dated 17.07.2017 by the

detaining authority, against the detainee by name, Valarmathi, aged 23 years, D/o.Madhaiyan, 2/327, Veemanur, Chinnanur, Sukkampatty Via, Veeranam, Salem, and quash the same.

2. The Inspector of Police, Kannankurichi Police Station, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred that the detainee has involved in the following adverse cases:-

1. Annamalai Nagar Police Station, Crime No.218 of 2014, registered under Sections 294(b), 447 and 506(ii) of Indian Penal Code;
2. Annamalai Nagar Police Station, Crime No.219 of 2014, registered under Sections 294(b), 447 and 506(i) of Indian Penal Code;
3. Pallapatty Police Station, Crime No.87 of 2017, registered under Sections 147, 188 and 341 of Indian Penal Code;
4. Salem Town Police Station, Crime No.148 of 2017, registered under Section 151 of Cr.PC read with Sections 143, 341, 294 (b) and 188 of Indian Penal Code;
5. Kulithalai Police Station, Crime No.277/2017, registered under Sections 153, 505(1) (b) of Indian Penal Code read with Section 7(1)(a) of Criminal Law Amendment Act; and
6. Coimbatore City, Racecourse Police Station, Crime No.740 of 2017, registered under Sections 143, 341, and 188 of Indian Penal Code.

3. Further, it is averred in the affidavit that on 12.07.2017, one M.Mani, Sub-Inspector of Police, Kannankurichi Police Station has given a complaint to the Inspector of Police, Kannankurichi Police Station, wherein, it is alleged that the present detainee and others in the guise of "Iyarkai Pathukaapu Kuzu and Pothunala Maanava Ezhuchi", have formed an unlawful assembly in the place of occurrence and also raised slogans against the Central Government. Under the said circumstance, a case has been registered in Crime No.292 of 2017 under Sections 153, 505(1)(b) of Indian Penal Code r/w Section 7(1)(a) of Criminal Law Amendment Act and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detainee.

4. The Detaining Authority, after considering the averments made in the affidavit and other connected documents, has derived a subjective satisfaction to the effect that the detainee is a habitual offender and ultimately, branded her 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 detainee, as petitioner.

5. In the counter affidavit filed on the side of the respondents, it is averred to the effect that most of the averments made in the petition are false and the Sponsoring

Authority has submitted all the relevant materials to the Detaining Authority and the Detaining Authority, after considering all the relevant materials supplied to him and other connected papers, has rightly derived a subjective satisfaction to the effect that the detainee is a habitual offender and ultimately, branded her as goonda by way of passing the impugned detention order and the same does not call for any interference and therefore, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has raised the following points:-

i) On the side of the detainee, a representation has been submitted, but the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

ii) It is seen from the records that the detainee has been arrested on 12.07.2017 in connection with the ground case registered in Crime No.292/2017 Kannankurichi Police Station, but the factum of arrest has not been informed to anybody and the same would affect the rights of the detainee and on that ground also, the Detention Order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor has contended that the representation submitted on the side of the detainee has been duly disposed of and further, the factum of arrest made in the ground case has been duly informed and under the said circumstances, the contentions put forth on the side of the petitioner are 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, 4 clear working days are available and in between column Nos.12 and 13, 1 clear working day is available and no explanation has been given on the side of the respondents.

9. It is an admitted fact that against the detainee, Act 14 of 1982 has been invoked only on the basis of the ground case registered in Crime No.292 of 2017 Kannankurichi Police Station under Sections 153, 505(1)(b) of the Indian Penal Code r/w Section 7(1)(a) of Criminal Law Amendment Act. Further, it is seen from the detention order that the detainee has been arrested on the same day. But in the booklet, it has been simply stated to the effect that in connection with the ground case, detainee has been arrested on 12.07.2017, but with regard to the factum of arrest, intimation has not been given to anybody. As rightly pointed out on the side of the petitioner since intimation has not been given to anybody with regard to the factum of arrest made in the ground case and the same would affect the rights of the detainee guaranteed under Article 22[5] of the Constitution

of India. It has already been decided that the representation given on the side of the detenue has not been disposed of without delay. Further, the factum of arrest has not been intimated to the near relatives/friends of the detenue and therefore, on the basis of the contentions put forth on the side of the petitioner, this Court is of the considered view that the detention order in question is liable to be quashed.

10. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 17.07.2017 passed in C.M.P.No.55/GOONDA/SALEM CITY/2017 by the second respondent against the detenue by name, Valarmathi, aged 30 years, Valarmathi, aged 23 years, D/o.Madhaiyan, 2/327, Veemanur, Chinnanur, Sukkampatty Via, Veeranam, Salem, is quashed and directed to set her at liberty forthwith unless she is required to be incarcerated in any other case. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

- 1.The Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai -9.
- 2.The Commissioner of Police
Salem City, Salem.
- 3.The Superintendent
Special Prison for Women,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat, Chennai-9

H.C.P.No.1418 of 2017

VGII(CO)
NR 05/09/2017