

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2017

CORAM

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

H.C.P.No.145 of 2017

Shahira

... Petitioner
(Mother of the Detenu)

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary of Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Salem City.

3.The Superintendent,
Central Prison,
Salem.

... 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 leading to the detention of the petitioner's son Salim @ Salim Basha, aged 24 years, S/o.Kadhar Sherif, presently detained at Central Prison under Act 14/1982 as a GOONDA vide the detention order dated 23.12.2016 in CMP.No. 97/Goonda/Salem City/2016, directing to produce body or the person of the detenu before this Hon'ble Court and thereafter set him at liberty from Central Prison, Salem by set aside the above order.

For Petitioner : Mr.M.Mani Gopi for
Mr.B.Vasudevan

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 CMP.No.97/Goonda/Salem City/2016 dated 23.12.2016 by the Detaining Authority against the detenu by name, Salim @ Salim Basha, aged 24 years, S/o.Kadhar Sherif, residing at No.211/19, Sundar Street, Kitchipalayam, Salem and quash the same.

2. The Inspector of Police, Shevapet 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. Kitchipalayam Police Station Crime No.93/2015 registered under Sections 147, 148 and 302 of Indian Penal Code @ into 147, 148, 120[b], 341, 302 and 506[ii] of Indian Penal Code.
- ii. Salem Town Police Station Crime No.250/2016 registered under Section 341, 294[b], 323 and 506[ii] of Indian Penal Code.

3. Further, it is averred in the affidavit that on 18.11.2016, one Sakthivel, aged 26 years, S/o.Marimuthu, residing at No.631, Narikuravar Colony, Panchanthangi Lake, Gugai, Salem-6, as de facto complainant has given a complaint to the Sub Inspector of Police, Shevapet Police Station, wherein, it is stated that in the place of occurrence, the detenu has unlawfully restrained the de facto complainant and also attacked him with an intention to murder and consequently, a case has been registered in Crime No.514/2016 under Sections 341, 307 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 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 mother of the detenu as petitioner.

5. On the side of the respondents, a counter has been filed, wherein, it has been contended inter alia to the effect that most of the averments made in the petition are false. The Sponsoring Authority has supplied all the materials to the Detaining Authority. The Detaining Authority after perusing all the materials, 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 the same is not liable to be quashed and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the petitioner, a representation has been given to the concerned authorities. But, the same has 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 to the effect that the representation submitted on the side of the detenu has been disposed of without delay and therefore, the contention urged 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, 5 clear working days are available. Likewise, 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 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 23.12.2016 passed in CMP.No.97/Goonda/Salem City/2016 by the Detaining Authority against the detenu by name, Salim @ Salim Basha, aged 24 years, S/o.Kadhar Sherif, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

gya

To

1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Salem City.

3.The Superintendent,
Central Prison, Salem.(In Duplicate)

4.The Joint Secretary To Government,
Public(Law & Order)
Fort St.George,Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Vasudevan,Advocate sr.50850

H.C.P.No.145 of 2017

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ss(20/7/2017)



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