

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.08.2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.163 of 2017

A.Madeswaran Petitioner/Father of the Detenue
vs.

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

2.The District Collector and
District Magistrate,
Salem District,
Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent in his proceedings in C.M.P.No.3/Sexual Offender/C2/2017, dated 09.01.2017, against the petitioner's son Rajivgandhi, son of Madeswaran, aged 27 years, who is confined at Central Prison, Salem, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

SCHEDULE

1.Name of the Detenue : Rajivgandhi

2.Father's Name : Madeswaran

3.Age : 27 Years

4.Permanant Address : Periyar Nagar,
NO.74, Krishnapuram
Gengavalli Taluk,
Salem District.

5.Identification marks: Not stated in the detention order

6.Date of Detention Order : 09/01/2017

7.Ref.No.of Detention order : C.M.P.NO.3/Sexual Offender/C2/2017

8.Where the detenu is lodged: Central Prison, Salem.

For Petitioner : Mr.M.Rajendran

For Respondents : Mr.V.M.R.Rajentran, Addl.P.P.

ORDER

(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 detention order passed in C.M.P.No.3/Sexual Offender/C2/2017, dated 09.01.2017, by the detaining authority against the detenu, by name Rajivgandhi, aged 27 years, S/o Matheswaran, residing at 2nd Ward, Periyar Nagar, 74, Krishnapuram, Gangavalli Taluk, Salem District and quash the same.

2. The Inspector of Police, Gangavalli 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 case.

- i. Gangavalli Police Station, Cr.No.93 of 2016, registered under Sections 448, 323, 376 read with Sec.511 of the Indian Penal Code, altered into Sections 448 and 376 read with Sec.511 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 14.10.2016, at about 10.00 hours, one Chinnadurai, aged 31 years, son of Periasamy, residing at Periya Nagar, 74, Kishnapuram Village, as defacto complainant, has given a complaint in Gangavalli Police Station, against the detenu, wherein it is alleged to the effect that due to sexual harassment, alleged to have been given by the detenu, the wife of the defacto complainant has committed suicide and consequently, a case has been registered against him in Crime No.278 of 2016, under Sections 294(b), 354, 306 of the Indian Penal Code and Section 4 of the Women Harassment Act 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 derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as a

'Sexual Offender' 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. On the side of the respondents, counter has not been filed and therefore, the present petition is disposed of on merits on the basis of available materials on record.

6. The learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, a representation has been submitted and the same has not been disposed of without delay and therefore, the detention order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondents has contended that the representation submitted by the detenu has already been disposed of without delay and therefore, 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 is clearly stated that in respect of first representation, in between Column Nos.7 to 9, seven clear working days are available and in between Column Nos.12 and 13, ten 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.

In fine, this Habeas Corpus Petition is allowed. The detention order dated 09.01.2017, passed in C.M.P.No.3/Sexual Offender/C2/2017 by the detaining authority against the detenu, by name Rajivgandhi, aged 27 years, S/o Matheswaran, residing at 2nd Ward, Periyar Nagar, 74, Krishnapuram, Gangavalli Taluk, Salem District, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

Sd/-
Asst.Registrar (CS III)

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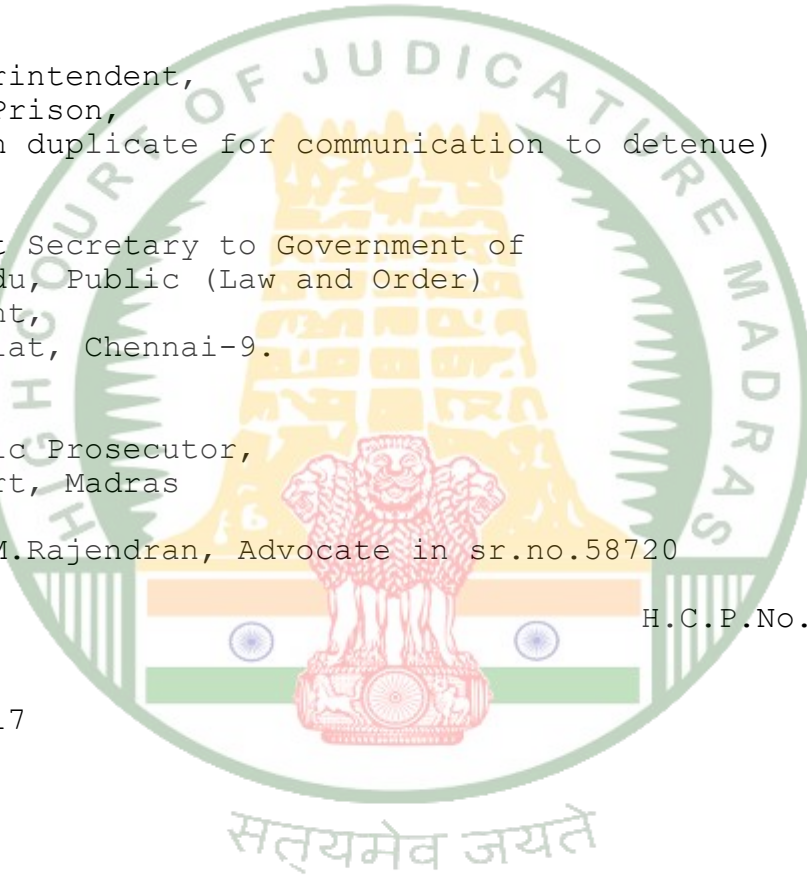
Sub Asst. Registrar

To

1. The Secretary to Government,
Home Prohibition and Excise Department,
Fort St.George,
Chennai-9.
 2. The District Collector and
District Magistrate,
Salem District,
Salem.
 3. The Superintendent,
Central Prison,
Salem.(in duplicate for communication to detainee)
 4. The Joint Secretary to Government of
Tamil Nadu, Public (Law and Order)
Department,
Secretariat, Chennai-9.
 5. The Public Prosecutor,
High Court, Madras
- +1cc to Mr.M.Rajendran, Advocate in sr.no.58720

H.C.P.No.163 of 2017

GR(CO)
NR 16/08/2017



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