

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.07.2017

CORAM

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

H.C.P.No.177 of 2017

Yasodhamma

.. Petitioner

Vs

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Home, Prohibition, Excise Department,
Secretariat, Chennai-9.

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records relating to the proceedings of the 2nd respondent in order Memo No.S.C.No.61/2016 against the petitioner's son Vinothkumar, S/o.Munuswamy, aged about 26 years and quash the same and consequently direct the respondents to produce the detenu who has been detained under Tamil Nadu Act 14 of 1982, currently confined at Central Prison, Salem before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.Subash for Mr.K.Shanmugam

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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 records relating to the detention order passed in S.C.No.61/2016 dated 16.12.2016 by the Detaining Authority against the detenu by name, Vinothkumar, aged 26 years, S/o.Munuswamy, residing at Muthukurukki Village & Post, Shoolagiri Taluk, Krishnagiri District and quash the same.

2. The Inspector of Police, Prohibition Enforcement Wing, Hosur 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. Hosur PEW Crime No.398/2016 registered under Section 4[1][a] of Tamil Nadu Prohibition Act, 1937.
- ii. Hosur PEW Crime No.990/2016 registered under Section 4[1][a] of Tamil Nadu Prohibition Act, 1937.

iii. Hosur PEW Crime No.1236/2016 registered under Section 4[1][a] of Tamil Nadu Prohibition Act, 1937.

3. Further, it is averred in the affidavit that on 21.11.2016 at about 8.00 a.m., the Inspector of Police, Prohibition Enforcement Wing, Hosur and others have made a vehicle check up and ultimately, found that the detenu is in possession of 50 bottles of whisky and 30 bottles of TASMAC liquor without license and consequently, a case has been registered in Crime No.1309/2016 under Sections 4[1][a] r/w 4[1-A] of Tamil Nadu Prohibition Act, 1937 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 to a subjective satisfaction that the detenu is a habitual offender and ultimately, branded him as bootlegger by 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, 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 submitted all the materials to the Detaining Authority. The Detaining Authority after considering all the materials, has arrived to a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, passed the impugned Detention Order and the same does not call for any interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that the petitioner has given a representation 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. Per contra, the learned Additional Public Prosecutor has represented that the representation submitted on the side of the petitioner has been duly considered without delay and therefore, the contention put forth by the petitioner is totally baseless and the same 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, 38 clear working days are available. Likewise, in between column Nos.12 and 13, 12 clear working days are available and no explanation has been given on

the side of the respondents for such a huge delay and that itself 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 16.12.2016 passed in S.C.No.61/2016 by the Detaining Authority against the detenu by name, Vinothkumar, S/o.Munuswamy, residing at Muthukurukki Village & Post, Shoolagiri Taluk, Krishnagiri District is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

[A.S., J.]

[P.K., J.]

10.07.2017

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To

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

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

3.The Public Prosecutor,
High Court, Madras.

A.SELVAM, J.
and
P.KALAIYARASAN, J.

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