

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2017

CORAM

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

H.C.P.No.200 of 2017

Jessi @ Jessitha Mary ... Petitioner/Wife of the detenue

Vs

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

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

... 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, relating to the Detention Order passed by the second respondent in Memo No.03/BCDFGISSSV/2017 dated 06.01.2017, set aside the same and direct the respondents to produce the detenu, Vadivel, male aged 35 years, Son of Mani, now confined in Central Prison, Puzhal-II, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Senthil Vel
for Mr.K.S.Kaviarasu

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 the records relating to the detention order passed in BCDFGISSSV No.03/2017 dated 06.01.2017, against the detenu by name, Vadivel, aged 35 years, S/o.Mani, 2nd Street, Mel Tiruthani, Tiruthani Taluk, Tiruvallur District and quash the same.

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

i) Tiruthani Police Station, Crime No.640 of 2016, registered under Sections 120(B), 341, 324, 302, 506(ii) of Indian Penal Code, Sections 4(b) & 5(a) of Explosive Substances Act, 1908 with Section 3(1) of Prevention of Damage to Public Property Act, 1984;

3. Further, it is averred in the affidavit that on 14.10.2016, one Murthy, S/o.Subramani, residing at No.18, Chittoor Road, Tiruthani, as defacto complainant, has given a complaint to the Sub-Inspector of Police, Thiruthani Police Station, wherein it is alleged to the effect that in the place of occurrence, the accused has forcibly taken away a sum of Rs.540/- from the defacto complainant by showing a deadly weapon and consequently, a case has been registered in Crime No.646 of 2016, under Sections 294(b), 392, 397, 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 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 wife of the detenu, as petitioner.

5. Even though this petition has been posted today finally for filing counter, on the side of the respondents, counter has not been filed. Under such circumstance, this 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 given, but the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has contended that the representation submitted on the side of the detenu has been duly 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 has been clearly stated that in between

column Nos.7 and 9, 23 clear working days are available and in between column Nos.12 and 13, 3 clear working days are available and no explanation has been given on the side of the respondents with regard to such delay and that 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 Habeas Corpus Petition is allowed and the Detention Order dated 06.01.2017 passed in Memo No.BCDFGISSSV No.03 / 2017 by the second respondent against the detenu by name, Vadivel, aged 35 years, S/o.Mani, 2nd Street, Mel Tiruthani, Tiruthani Taluk, Tiruvallur District is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar (CSV)

/true copy/

Sub Asst. Registrar

gpa

To

1. The 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 and District Magistrate
Thiruvallur District.
Thiruvallur.
4. The Superintendent
Central Prison II
Puzhal, Chennai
5. The Public Prosecutor,
High Court, Madras.

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NR 17/08/2017