

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2017

CORAM

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

H.C.P.No.203 of 2017

Santhi

.. Petitioner

Vs

1.The Secretary (Home)
Prohibition and Excise Department
Government of Tamil Nadu
Fort St. George
Chennai - 600 009

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 the records from the 2nd respondent pertaining to the order of detention made in C.M.P.No.99/Goonda/Salem City/2016 dated 27.12.2016 from the respondents and quash the same and direct production of the detenu A.Gopi, S/o. Late Ayyasamy detained in Central Prison, Salem under Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.A.Ganesan

For Respondents : Mr.J.Karruppiah
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.99/Goonda/Salem City/2016 dated 27.12.2016, against the

detenu by name, Gopi, S/o.Ayyasamy residing at Mettu Street, Sathriya Nagar, Udayapatty, Salem and quash the same.

2. The Inspector of Police, Ammapet 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) Veeranam Police Station, Crime No.429 of 2016, registered under Sections 147, 148, 302 of Indian Penal Code, altered to Sections 120(B), 364, 147, 148, 302 and 201 of Indian Penal Code.

3. Further it is averred that in the affidavit that on 02.12.2016, one Arumugam, aged 33 years, S/o.Vaithilingam, B12, Jothi Theatre West Street, Ammapet, Salem, as defacto complainant, has given a complaint wherein it is averred to the effect that in the place of occurrence the detenu has unlawfully restraint the defacto complainant and also threatened to kill him and under such circumstances, a case has been registered in Crime No.638 of 2016 under Sections 341, 387 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 mother of the detenu, as petitioner.

5. Even though this petition has been posted today for filing counter finally, counter has not been filed on the side of the respondents. Under such circumstance, this petition is disposed of on merits on the basis of available documents.

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, 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 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, 6 clear working days 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 27.12.2016 passed in C.M.P.No.99/Goonda/Salem City/2016 by the second respondent against the detenu by name, Gopi, S/o.Ayyasamy, aged 22 years, residing at Mettu Street, Sathriya Nagar, Udayapatty, Salem is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai - 600 009

2. The District Magistrate and
District Collector
Salem

3.The Commissioner of Police/
Salem City, Salem

4.The Superintendent
Central Prison Salem

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.203 of 2017

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