

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.204 of 2017

Madhammal

.. Petitioner

Vs

1. The State of Tamil Nadu, rep-by
The Principal Secretary to Government
Home, Prohibition and Excise Department
Chennai - 600 009
2. The District Magistrate and District Collector
Dharmapuri District
3. The Superintendent
Central Prison
Salem-7

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for records relating to the detention of the petitioner's husband Velu, aged 49 years, Son of Appu Gounder, presently detained in Central Prison, Salem, under Act 14/1982/, as a "Drug Offender" vide Detention Order dated 28.09.2016 in C.M.P.No.31 of 2016/office of the District Magistrate and District Collector, Dharmapuri directing to produce body or the person of the detenu before this Court and thereafter, set him at liberty.

For Petitioner : Mr. B.Vasudevan

For Respondents : Mr.J.Karuppiah
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 detention order passed in S.C.No.31 of 2016 dated

28.09.2016, against the detenu by name, Velu, aged 49 years, S/o.Appu Gounder, residing at Karagur Village, Seeriyampatti Post, Palacode Taluk, Dharmapuri and quash the same.

2. The Inspector of Police, Maranadhalli 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 cases:-

1. Marandahalli Police Station, Crime No.257/2015, registered under Sections 20(b)(1) of NDPS Act, 1985; and
2. Marandahalli Police Station, Crime No.05/2016, registered under Sections 20(b)(1) of NDPS Act, 1985.

3. Further, it is averred in the affidavit that on 06.08.2016 at 09.00am, on the basis of reliable information, the Sub-Inspector of Police, Maranadhalli Police Station and others have conducted a raid in the place of occurrence and found that the detenu is in possession of 5.500 kgs of Ganja without licence and after observing due formalities, a case has been registered in Crime No.228 of 2016 under Section 20(b)(ii) (B) of NDPS Act, 1985 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 "Drug Offender" 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 records.

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 put forth 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, 4 clear working days and in between column

Nos.12 and 13, 23 clear working days are available and no explanation has been given on the side of the respondents with regard to such huge 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 28.09.2016 passed in S.C.No.31 of 2016 by the second respondent against the detenu by name, Velu, aged 49 years, S/o.Appu Gounder, residing at Karagur Village, Seeriyampatti Post, Palacode Taluk, Dharmapuri is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. 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
Dharmapuri District
3. The Superintendent
Central Prison
Salem-7
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai-9
5. The Public Prosecutor,
High Court, Madras.

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NR 24/07/2017