

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

CORAM:

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

H.C.P.No.243 of 2017

Mohan Kumar Roy

... Petitioner

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 Commissioner of Police,
Greater Chennai Police,
Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records relating to the detention order passed by the 2nd respondent pertaining to the order made in BCDFGISSSV No.1118/2016, dated 26.10.2016 in detaining the detenu under 2 (F) of Tamil Nadu Act of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu Mohankumar Roy, son of Pacchan Roy, aged about 28 years, who is detained at the Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Ms.R.Gomathi for
M/s.P.Sundararajan

For Respondents : Mr.V.M.R.Rajentran,
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 the records relating to detention order passed in BCDFGISSSV No.1118/2016, dated 26.10.2016, by the detaining authority against the detenu, by name Mohan Kumar Roy, aged 28years, S/o Pacchanroy, Lohana Bathchala Village, Bahirvasthan Police Station, Madhupani District, Bihar State, and quash the same.

2. The Inspector of Police, R1 Mambalam 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 cases.

- i. R-1 Mambalam Police Station Cr.No.161 of 2016, registered under Section 380 of the Indian Penal Code.
- ii. R-2 Kodambakkasm Police Station Cr.No.190 of 2016, registered under Sections 457 and 380 of the Indian Penal Code.
- iii. R-2 Kodambakkasm Police Station Cr.No.234 of 2016, registered under Sections 457 and 511 of the Indian Penal Code.
- iv. R-2 Kodambakkasm Police Station Cr.No.291 of 2016, registered under Sections 457 and 380 of the Indian Penal Code.
- v. R-1 Mambalam Police Station Cr.No.496 of 2016, registered under Section 379 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 28.04.2016, at about 10.30 hrs, one Ashok Dugar, aged 55 years, son of Fathechand, residing at No.30, Thanikachalam Road, T.Nagar, Chennai-17, has given a complaint in R-1 Mambalam Police Station against the detenu and others and the same has been registered in Crime No.546 of 2016 under Section 381 of the Indian Penal Code and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

4. The detaining authority, after perusing 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 'Goonda' by way of passing the impugned detention order and in order to quash the same, the present petition has been filed by the detenu himself as petitioner.

5. In the counter filed on the side of the respondents it is averred to the effect that most of the averments made in the petition are false. The sponsoring authority has submitted all the relevant materials to the detaining authority. The detaining authority, after considering all the relevant materials and other connected documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as a 'goonda' by way of passing the impugned detention order and the same does not require any interference and therefore, the present petition deserves to be dismissed.

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 appearing for the respondents has contended to the effect 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 is clearly stated that in between Column Nos.7 to 9, four clear working days are available and in between Column Nos.12 and 13, four 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 26.10.2016, passed in BCDFGISSSV No.1118/2016, by the detaining authority against the detenu, by name Mohan Kumar Roy, aged 28 years, S/o Pacchanroy, residing at Lohana Bathchala Village, Bahirvasthan Police Station, Madhupani District, Bihar State, 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/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

msk

To

1. The Joint Secretary to Government of Tamil Nadu, Public (Law and Order) Department, Secretariat, Chennai-9.
2. The Secretary to Government, Home Prohibition and Excise Department, Fort St.George, Chennai-9.
3. The Commissioner of Police, Greater Chennai Police, Office of Commissioner of Police (Goondas Section) Vepery, Chennai-600 007
4. The Superintendent, Central Prison, Puzhal, Chennai.
5. The Public Prosecutor, High Court, Madras

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