

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM:

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

H.C.P.No.278 of 2017

Vellaikannu
Petitioner

....

vs.

The State represented by its

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records pertaining to the order of detention dated 07.02.2017, passed by the second respondent in C.M.P.No.9/Goonda/C2/2017, quash the same and produce the detenu, Vijayan, aged about 41 years, S/o.Ponnusamy, before this Court and set him at liberty and the detenu now confined in Central Prison, Salem.

For Petitioner : Mr.R.Sankarasubbu for
Mr.Mr.D.Mario Johnson

For Respondents : Mr.V.M.R.Rajentran, Addl.P.P.

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 C.M.P.No.9/Goonda/C2/2017, dated 07.02.2017, by the detaining authority against the detenu, by name Vijayan, aged 41 years, S/o.Ponnusamy, residing at Gandhi Colony, Koottathuppatty, Valappady Taluk, Salem District and quash the same.

2. The Inspector of Police, Karippatty 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) Karippatty Police Station, Cr.No.292/2016 registered under Sections 302 altered into Sec.120(b), 147, 148 and 302 of the Indian Penal Code.

(ii) Karippatty Police Station, Cr.No.368/2016 registered under Sections 392 read with 397 and 506(ii) of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 01.12.2016, one Gopinath, Village Administrative Officer, Koottathuppatty, Valappady Taluk, has given a complaint to the Inspector of Police, Karippatty Police Station, wherein it has been specifically alleged to the effect that the present detenu and others have possessed of deadly weapons for committing crime. Under such

circumstances, a case has been registered in Crime No.370 of 2016, under Section 399 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 considering 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 detenu himself has filed by the mother of the detenu, as petitioner.

5. Even though this habeas corpus petition has been posted today finally for filing counter, on the side of the respondents, counter has not been filed and therefore, the present 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 and 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 by the detenu has already been disposed of without delay and therefore, the detention order in question need not be quashed.

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, fourteen clear working days are available and in between Column Nos.12 and 13, twenty nine 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 07.02.2017 passed in C.M.P.No.9/Goonda/C2/2017 by the detaining authority against the detenu, by name Vijayan, aged 41 years, S/o Ponnusamy, residing at Gandhi Colony, Koottathuppatty, Valappady Taluk, Salem District, 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.

msk

Index : Yes/No
Internet : Yes/No

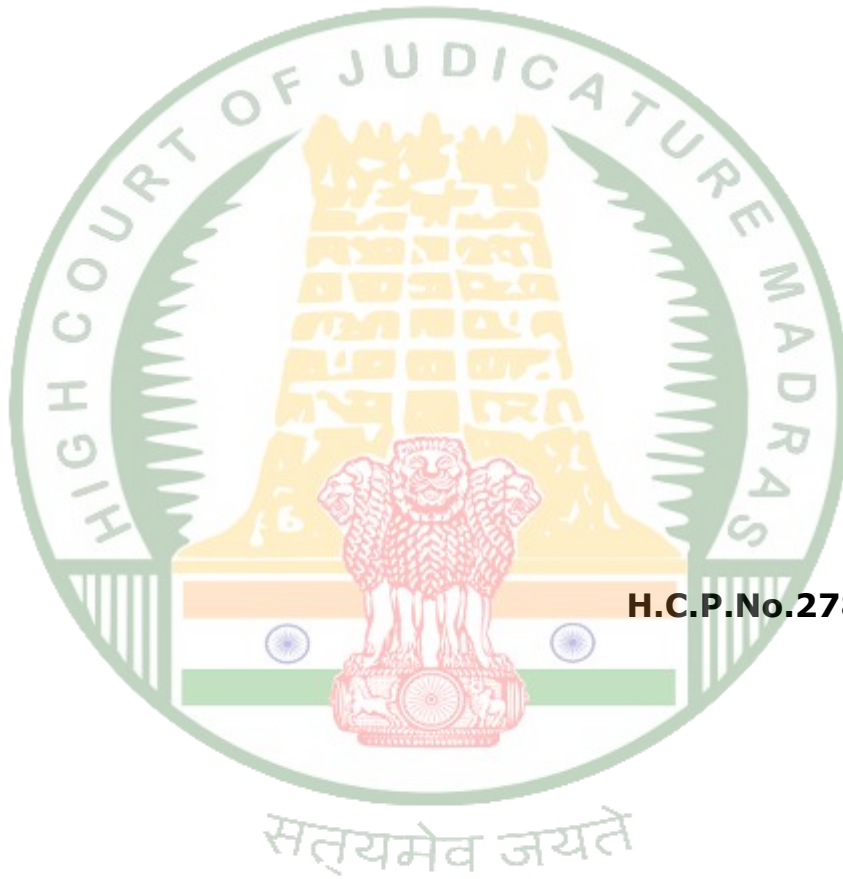
To

- 1.The Joint Secretary to Government of
Tamil Nadu, Public (Law and Order)
Department,
Secretariat, Chennai-9.
- 2.The Secretary
Home, Prohibition and Excise Department,
Fort St. George, Chennai 9
- 3.The District Magistrate and District Collector,
Salem District,
Salem.
- 4.The Superintendent of Prison,
Central Prison, Salem.
- 5.The Public Prosecutor,
High Court, Madras

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

msk



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