

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.08.2017

CORAM

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

H.C.P.No.311 of 2017

B.Rajesh

.. Petitioner

Vs

1.State rep. by
The Secretary [Home]
Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-9.

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 entire records relating to the petitioner's detention under Act 14/1982 vide Detention Order dated 28.12.2016 on the file of the 2nd respondent herein made in proceedings No.CMP.No.102/Goonda / Salem City/2016 and quash the same as illegal and consequently direct the respondents herein to produce the petitioner Rajesh, aged 20 years, S/o.Baskar, before this Hon'ble Court and set him at liberty from detention now he confined at Borstal School, Pudukkottai.

For Petitioner : Mr.P.Ezhilnilavan

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 records relating to the detention order passed in CMP.No.102/Goonda/Salem City/2016 dated 28.12.2016 by the Detaining Authority against the detenu by name, Rajesh, aged 20

years, S/o.Baskar, residing at No.4/45, Ayyanarappan Koil Street, Mettupatty Thathanur, Salem and quash the same.

2. The Inspector of Police, Veeranam 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.429/2016 registered under Sections 147, 148, 302 of IPC @ 120[b], 364, 147, 148, 302 and 201 of IPC.

3. Further, it is averred in the affidavit that on 03.12.2016, one Govindan, S/o.Periyasamy, as de facto complainant has given a complaint to the Sub Inspector of Police, Veeranam Police Station, wherein, it is alleged to the effect that in the place of occurrence, the detenu and others have tried to assault the de facto complainant. Under such circumstances, a case has been registered in Crime No.430/2016 under Sections 341, 387 and 506[iii] 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 arrived at a subjective satisfaction 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 detenu himself as petitioner.

5. In spite of repeated adjournments, on the side of the respondents, counter has not been filed. Under such circumstances, the present Habeas Corpus Petition has been disposed of on the basis of the available materials on record.

6. Learned counsel appearing for the petitioner/detenu has contended to the effect that on the side of the detenu, a representation has been submitted to the concerned authorities. But, the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. Learned Additional Public Prosecutor has contended that the representation submitted on the side of the detenu has been disposed of without delay and therefore, the contention put forth on the side of the petitioner/detenu 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, 7 clear working days are available. Likewise, 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 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.

9. In fine, this petition is allowed. The Detention Order dated 28.12.2016 passed in CMP.No.102/Goonda/Salem City/2016 by the Detaining Authority against the detenu by name, Rajesh, aged 20 years, S/o.Baskar is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gya
To

1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.

2.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-9.

3.The Commissioner of Police,
Salem City, Salem.

4.The Superintendent,
Borstal School, Pudukkottai.
[in duplicate for communication to the detenu]

5.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.P.Ezhil Nilavan,Advocate sr.56107

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mp(co)
ss(4/8/2017)