

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2017

CORAM

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

H.C.P.No.316 of 2017

V.Vijaya

... Petitioner

Vs

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

2. The District Collector and District Magistrate
Vellore District
Vellore

... 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 Detention Order passed by the second respondent in C3/D.O No.15/2017 dated 12.02.2017, quash the same as illegal and direct the respondents herein to produce the detenu Vinayagam, aged 45 years, S/o.Ganesan, now detained in Central Prison, Vellore before this Court and set him at liberty.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor

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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 C3/D.O No.15/2017 dated 12.02.2017, against the detenu by name, Vinayagam, aged 39 years, S/o.Ganesan, residing at No.341, Mosque Street, Kallur Village and Post, Gudiyatham Taluk, Vellore District and quash the same.

2. The Inspector of Police, Gudiyatham Town 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:-

i) Gudiyatham Prohibition Enforcement Wing, Crime No.83 of 2015, registered under Sections 4(1)i, 4(1)aaa, 4(1-A)ii of TNP Act, 1937 r/w.328 of Indian Penal Code;

ii) Gudiyatham Prohibition Enforcement Wing, Crime No.520 of 2016, registered under Section 4(1) a of TNP Act, 1937; and

iii) Gudiyatham Town Police Station, Crime No.12 of 2017, registered under Sections 4(1)aaa and 4(1-A)ii of TNP Act, 1937.

3. Further, it is averred in the affidavit that on 09.01.2017, Inspector of Police, Gudiyatham Town Police Station and other police personnel have monitored the vehicles near Water Tank Bodipettai, Gudiyatham. At that time, the detenu has driven a two wheeler bearing Registration No.TN23 AR-9376 and he has been intercepted and subsequently found that the detenu has transported 110 litres of poisonous odour country arrack and after observing due formalities, registered a case in Crime No.15 of 2017, under Sections 4(1) (i), 4(1)aaa and 4(1-A)ii of Tamil Nadu Prohibition Act, 1937 r/w. Section 328 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 "Bootlegger" 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 given, but the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. 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, 13 clear working days are available and in between column Nos.12 and 13, 4 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 12.02.2017 passed in C3.D.O.No.15/2017 by the second respondent against the detenu by name, Vinayagam, aged 39 years, S/o.Ganesan, residing at No.341, Mosque Street, Kallur Village and Post, Gudiyatham Taluk, Vellore District is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa

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 - 600 009
3. The District Collector and District Magistrate
Vellore District
Vellore
4. The Superintendent
Central Prison, Vellore
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.316 of 2017

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CA(10/08/2017)