

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.07.2017

CORAM

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

H.C.P.No.330 of 2017

S.Bommi

.. Petitioner

Vs

1.The District Collector & District Magistrate
Thiruvallur District
Thiruvallur

2.The Secretary to Government of Tamil Nadu
Home, Prohibition and Excise Department
Chennai

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records of the 1st respondent herein in BCDFGISSSV No.28 of 2016 dated 30.12.2016 and set aside the order of detention passed against detenu by name Rajesh, S/o.Manoharan, aged about 30 years, detained in Central Prison, Puzhal, Chennai who is the nephew of the petitioner herein, quash the same and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.S.Suresh

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 the records relating to the detention order passed in BCDFGISSSV No.28 of

2016 dated 30.12.2016, against the detenu by name, Rajesh, aged 30 years, S/o.Manoharan (late) residing at No.47/3, Amman Koil Street, Melmanambedu Village, Vellavedu Post, Poonamallee Taluk, Tiruvallur District and quash the same.

2. The Inspector of Police, Vellavedu 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 case:

i) Manavalanagar Police Station, Crime No.545 of 2016, registered under Sections 294(b), 392, 397 and 506(ii) of Indian Penal Code;

3. Further, it is averred in the affidavit to the effect that on 14.10.2016 at about 05.45 hours, one Nithyanandam, S/o.Murugesan, No.27/4, Bajanai Koil Street, Melmanambedu Village, Vellavedu Post, Poonamallee Taluk,, as a defacto complainant, has given a complaint to the Sub-Inspector of Police, Sethiathope, wherein it is averred to the effect that on the same day at about 05.00 hours, the detenu and others formed an unlawful assembly and brutally attacked one Thangaraj and due to their overt act, he passed away and further they have also threatened the defacto complainant and others. On the basis of the allegation made in the complaint, a case has been registered in Crime No.886 of 2016 under Sections 147, 148, 341, 302 and 506(ii) IPC 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 materials, has derived a subjective satisfaction to the effect 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 aunt of the detenu, as petitioner.

5. On the side of the respondents, a counter has been filed, wherein, it is contended to the effect that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the materials to the Detaining Authority. 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 in the habit of committing grave offence one after another and passed the impugned Detention Order and altogether, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has contended to the effect that the detenu has been supplied with a booklet, wherein some vital documents are not readable. Under the said circumstances, the detenu has not been able to give

proper representation and therefore, the Detention Order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has submitted that most of the vital documents are readable. However, no representation has been given on the side of the detenu and therefore, the contention put forth on the side of the petitioner is liable to be eschewed.

8. It is seen from the booklet that from Page Nos.167 to 180, the documents annexed therein are not readable. Since the said documents are not readable, it is highly impossible on the part of the detenu to make proper representation and in fact, 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 30.12.2016 passed in BCDFGISSSV No.28 of 2016 by the first respondent against the detenu by name, Rajesh, aged 30 years, S/o.Manoharan (late) residing at No.47/3, Amman Koil Street, Melmanambedu Village, Vellavedu Post, Poonamallee Taluk, Tiruvallur 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(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The District Collector & District Magistrate
Thiruvallur District
Thiruvallur

2.The Secretary to Government of Tamil Nadu
Home, Prohibition and Excise Department
Chennai

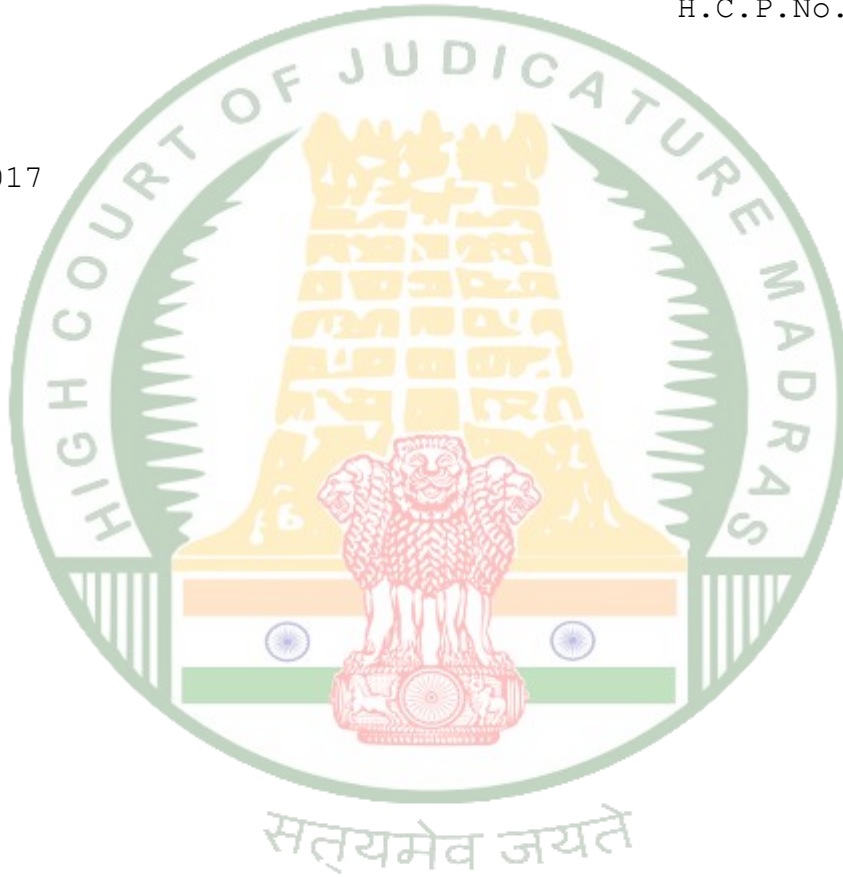
3.The Public Prosecutor,
High Court, Madras.

4.The Joint Secretary to Government (Law and Order)
Fort St.George Chennai-9

5.The Superintendent of Police
Central Prison
Puzhal Chennai

H.C.P.No.330 of 2017

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