

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.07.2017

CORAM

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

H.C.P.No.35 of 2017

B.Neelavathy

... Petitioner/Wife of
the Detenue

Vs

1.Government of Tamil Nadu,
Rep. by its Principal Secretary,
Home, Prohibition and Excise [XVI] Department,
Fort St. George,
Chennai-9.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records in Cr.M.P.No.29/ Goonda/2016 dated 16.11.2016 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of the petitioner's husband Bhagavathi, S/o.Palaniappan, aged 38 years, now confined in Central Prison, Coimbatore before this Hon'ble Court and set him at liberty.

For Petitioner : Ms.R.Subhadra Devi

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 Cr.M.P.No.29/Goonda/2016 dated 16.11.2016 by the Detaining Authority against the detenu by name, Bhagavathi, S/o.Palaniappan, residing at Door No.230, Jeyam Hollow Block Company, Kunnathur Road, Uthukkuli Taluk, Tiruppur District and quash the same.

2. The Inspector of Police, Dharapuram 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. Dharapuram Police Station Crime No.13/2016 registered under Sections 457 and 397 of Indian Penal Code.
- ii. Moolaur Police Station Crime No.143/2016 registered under Sections 457 and 392 of Indian Penal Code.
- iii. Vellakovil Police Station Crime No.159/2016 registered under Section 379 of Indian Penal Code.
- iv. Vellakovil Police Station Crime No.251/2016 registered under Section 380 of Indian Penal Code.

3. Further, it is averred in the affidavit that on 27.05.2016, one Senthilkumar, S/o.Eswaramurthy, as de facto complainant has given a complaint to the Special Sub Inspector of Police, Dharapuram Police Station and the same has been registered in Crime No.438/2016 under Section 392 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 a satisfied conclusion 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 wife of the detenu as petitioner.

5. On the side of the respondents, counter has been filed, wherein, it has been contended inter alia to the effect that most of the averments made in the petition are false. The Sponsoring Authority has supplied all the materials to the Detaining Authority. The Detaining Authority after considering the materials furnished to him, has arrived to a subjective satisfaction to the effect that the detenu is in the habit of

committing crimes one after another and ultimately, passed the impugned Detention Order and the same does not call for interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that a representation has been given 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. Per contra, the learned Additional Public Prosecutor has also equally contended to the effect that the representation given by the petitioner has been disposed of without delay and the said circumstances, the present petition deserves to be dismissed.

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, seven clear working days are available. Likewise, in between column Nos.12 and 13, six clear working days are available and no explanation has been given on the side of the respondents.

9. Since, 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.

10. In fine, this petition is allowed. The Detention Order dated 16.11.2016 passed in Cr.M.P.No.29/Goonda/2016 by the second respondent against the detenu by name, Bhagavathi, S/o.Palaniappan is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

1.The Principal Secretary to Government,
Home, Prohibition and Excise [XVI] Department,
Fort St. George, Chennai-9.

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

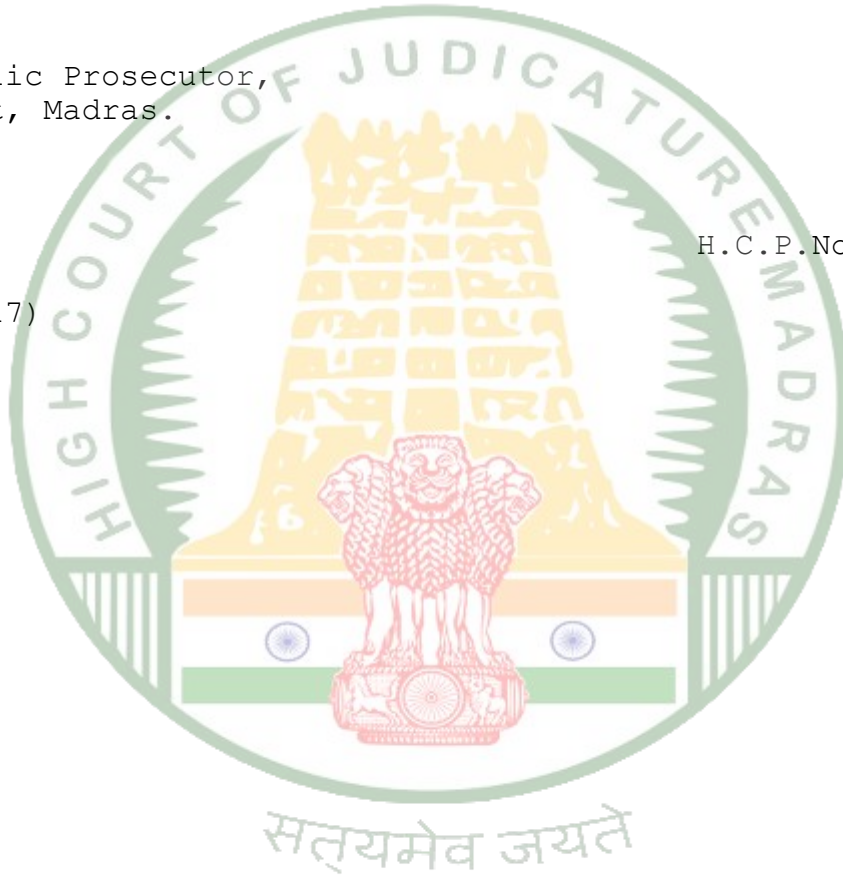
3.The Superintendent,
Central Prison,
Coimbatore(In Duplicate for Communication
to the detenue)

4.The Joint Secretary,
Joint (Law & Order)
Fort St. George,
Chennai-9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.35 of 2017

gj(co)
ss(6/7/2017)



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