

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2017

CORAM

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

H.C.P.No.356 of 2017

Pushpalatha .. Petitioner

Vs

State rep. by

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-9.

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, to call for the records in C.M.P.No.6/goonda/C2/2017 dated 24.01.2017 on the file of the District Magistrate and District Collector, Salem District and quash the same as illegal and direct the respondent to produce the detenu Asai @ Asaithambi, aged 37 years, S/o.Palanisamy, now confined at Central Prison, Salem and set him at liberty.

For Petitioner : Ms.S.Sengkodi

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 C.M.P.No.6/goonda/C2/2017 dated 24.01.2017 by the Detaining Authority against the detenu by name, Asai @ Asaithambi, aged 37 years, S/o.Palanisamy, residing at No.D-5, Gandhi Nagar Housing Board, Kalarampatty Main Road, Kitchipalayam, Salem Taluk, Salem District and quash the same.

2. The Inspector of Police, Mallur 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. Veeranam Police Station Crime No.218/2010 registered under Section 392 of Indian Penal Code.
- ii. Annadhanapatty Police Station Crime No.244/2013 registered under Sections 392 r/w 397, 511 and 506[ii] of Indian Penal Code.

3. Further, it is averred in the affidavit that on 30.11.2016, one Kumar, S/o.Kolandaigounder, residing at poosarikadu, Mecheriampalayam, as de facto complainant has given a complaint in Mallur Police Station, wherein, it is stated that in the place of occurrence, by showing a knife, the accused has taken away a sum of Rs.5,000/- from the custody of the de facto complainant and consequently, a case has been registered in Crime No.465/2016 under Sections 397 and 506[ii] of Indian Penal Code and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

4. The Detaining Authority after perusing the averments made in the affidavit and other connected documents, has derived to 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 wife of the detenu as petitioner.

5. In the counter filed on the side of the respondents, it is averred to the effect that most of the averments made in the petition are false. The sponsoring authority has submitted all the relevant materials to the detaining authority. The detaining authority after perusing all the relevant materials and other connected papers, has rightly derived to 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 the same does not require any interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner 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 to the effect that the representation submitted on the side of the petitioner has been duly disposed of without delay and

therefore, the contention put forth on the side of the detenu is liable to be rejected.

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, 20 clear working days are available and in between column Nos.12 and 13, 13 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.

9. In fine, this petition is allowed. The Detention Order dated 24.01.2017 passed in C.M.P.No.6/goonda/C2/2017 by the Detaining Authority against the detenu by name, Asai @ Asaithambi, aged 37 years, S/o.Palanisamy, 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 VI)

/true copy/

Sub Asst. Registrar

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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,
Secretariat, Fort St. George,
Chennai-9.

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

4.The Superintendent,
Central Prison, Salem.
[in duplicate for communication to the detenu]

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.356 of 2017

rr(co)

ss(17/8/2017)