

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.07.2017

CORAM

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

H.C.P.No.367 of 2017

Rami

.. Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Salem City,
Salem District.

.. Respondents

सत्यमेव जयते

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. 9/D.O/Salem City/2017 dated 17.02.2017 on the file of the Commissioner of Police, Salem City, the 2nd respondent herein and quash the same as illegal and direct the respondents to produce the detenu Kumar, S/o.Krishnan, aged 35 years, now confined at Central Prison, Salem and set him at liberty.

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

ORDER

[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.9/D.O/Salem City/2017 dated 17.02.2017 by the Detaining Authority against the detenu by name, Kumar, aged 35 years, S/o.Krishnan and quash the same.

2. The Inspector of Police, Salem NIB CID Wing 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. NIB CID Salem Wing Crime No.156/2016 registered under Sections 8[C] r/w 20[B][ii][C] of NDPS Act, 1985.

3. Further, it is averred in the affidavit that on the basis of the information received on 12.12.2016, the detenu has been intercepted by the

Sub Inspector of Police and ultimately, found 1.300 grams of ganja and consequently, a case has been registered in Crime No.148/2016 under Sections 8[C] r/w 20[b][ii][B] of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1985 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 drug offender 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, a counter has been filed, wherein, it is averred to the effect that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the material records to the Detaining Authority. The Detaining Authority after considering all the materials, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and rightly, branded him as drug offender by passing the impugned Detention Order and the same need not be interfered quashed and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended that on the side of the detenu, 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. 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, 4 clear working days are available. Likewise, in between column Nos.12 and 13, 30 clear working days are available and no explanation has been given on the side of the respondents, with regard to such a huge 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 17.02.2017 passed in C.M.P.No.9/D.O/Salem City/2017 by the Detaining Authority against the detenu by name, Kumar, aged 35 years, S/o.Krishnan is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

[A.S., J.] [P.K., J.]
13.07.2017

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To

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

2.The Commissioner of Police,
Salem City,
Salem District.

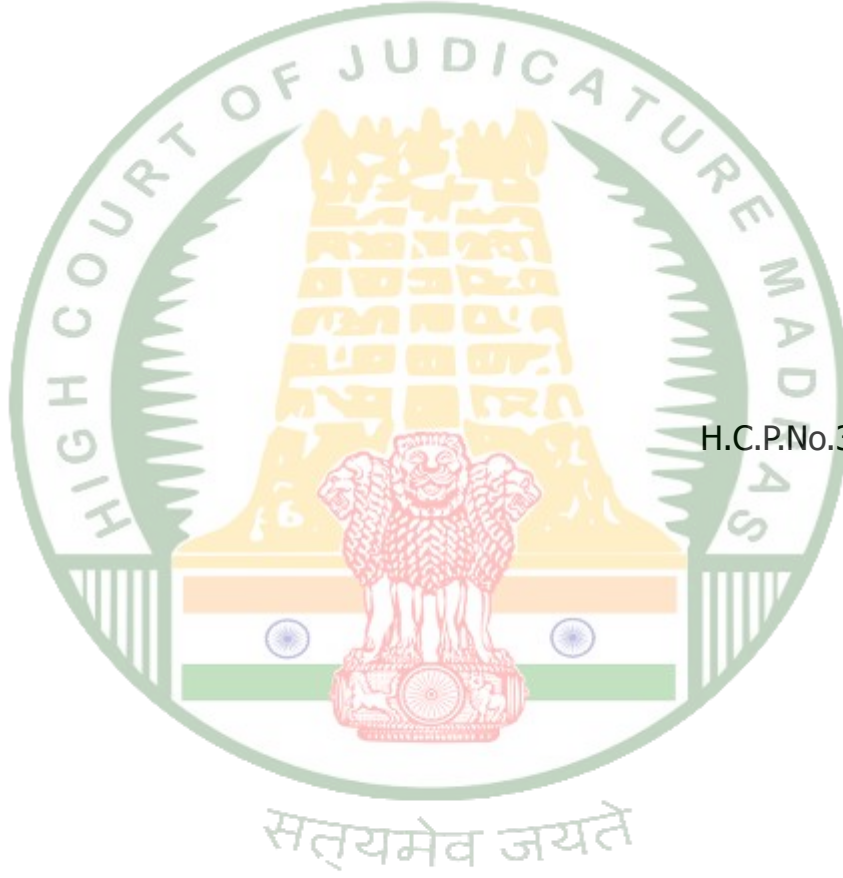
3.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

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A.SELVAM, J.
and
P.KALAIYARASAN, J.

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