

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.374 of 2017

Tmt.Bhakyalakshmi

.. Petitioner

Vs

- 1.The Commissioner of Police
Office of the Commissioner of Police
Egmore, Chennai
- 2.The Principal Secretary
Government of Tamil Nadu
Home, Prohibition and excise Department
Chief Secretariat
Fort St. George
Chennai - 600 009
- 3.The Superintendent
Central Prison
Puzhal, Chennai

.. 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 first respondent in Memo No.46/BCDFGISSSV/2017 dated 02.02.2017, quash the same and direct the third respondent to produce the detenu, the husband of the petitioner, Jai @ Jaikumar, aged 35 years, S/o.Anandan, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.Ganesh Rajan

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 Memo No.46/BCDFGISSSV/2017 dated 02.02.2017, against the detenu by name, Jai @ Jaikumar, aged 35 years, S/o.Anandan, Vellavedu Police Station Street, Vellavedu, Thirumazhisai, Thiruvallur Distirct and quash the same.

2. The Inspector of Police, K-5 Peravallore 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) Vellore Police Station, Crime No.178 of 2014, registered under Sections 323, 363, 506(ii), 120(B) of Indian Penal Code, altered to Sections 323, 324, 365, 384, 506(ii) and 120(B) of Indian Penal Code, altered to Sections 323, 324, 365, 364(A), 384, 506(ii) and 120(B) of Indian Penal Code;

ii) Vellore Taluk Police Station, Crime No.415 of 2015, registered under Sections 363, 384, 506(ii) of Indian Penal Code, altered to Sections 363, 342, 324, 385 & 506(ii) of Indian Penal Code, altered to Sections 363, 342, 324, 385, 506(ii) and 302 of Indian Penal Code, altered to Sections 120(b), 147, 148, 363, 342, 324, 385, 506(ii) and 302 of Indian Penal Code; and

iii)K-5 Peravallore Police Station, Crime No.750 of 2016, registered as Man Missing, altered to Sections 365 and 302 of Indian Penal Code.

3. Further, it is averred in the affidavit that on 11.11.2016, one Durairaj, aged 56 years, S/o.Azhagappan, residing at No.11/168, Lal Bahadur Shastri Street, G.K.M Colony, Chennai - 82, as defacto complainant, has given a complaint in K5 Peravallur Police Station against the detenu and another wherein it is stated that in the place of occurrence by showing a knife, the detenu and another have avulsed a sum of Rs.450/- from the defacto complainant and further both of them have threatened him. Under Such circumstance, a case has been registered in Crime No.865 of 2016, under Sections 294(b), 336, 341, 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 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 "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. 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, 4 clear working days are available and in between column Nos.12 and 13, 3 clear working days are available and no explanation has been given on the side of the respondents with regard to such 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 02.02.2017 passed in Memo No.46/BCDFGISSSV/2017 by the first respondent against the detenu by name, Jai @ Jaikumar, aged 35 years, S/o.Anandan, Vellavedu Police Station Street, Vellavedu, Thirumazhisai, Thiruvallur 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 VIII)

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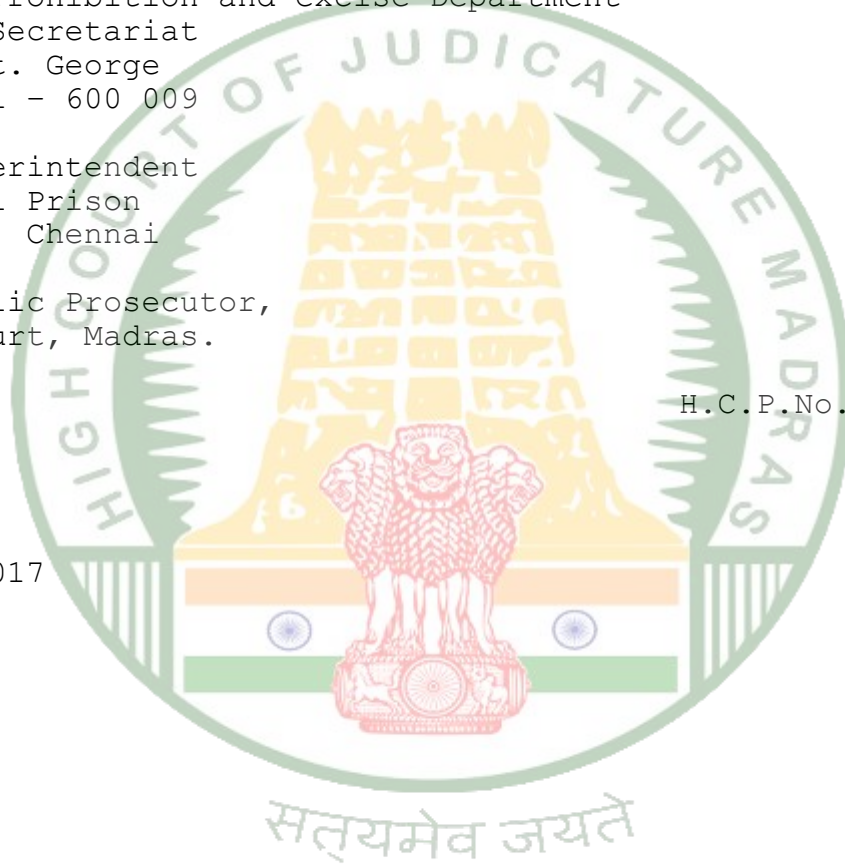
Sub Assistant Registrar

To

- 1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
- 2.The Commissioner of Police
Office of the Commissioner of Police
Egmore, Chennai
- 3.The Principal Secretary
Government of Tamil Nadu
Home, Prohibition and excise Department
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- 5.The Public Prosecutor,
High Court, Madras.

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