

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.09.2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.394 of 2017

Muthuraj

.... Petitioner

vs.

1.The State of Tamil Nadu,
rep.by the Secretary to Government(Home),
Prohibition and Excise Department,
Fort St.George,
Chennai-9.

2.The Commissioner of Police,
Vepery,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the entire records of the second respondent, in his proceedings No.1179/BCDFGISSSV dated 28.11.2016, to quash the same and consequently direct the respondents to produce the detenu, Solaisamy, son of Bethraj, aged about 22 years, now confined in Central Prison, Puzhal, set him at liberty forthwith.

For Petitioner : Mr.C.Premkumar

For Respondents : Mr.V.M.R.Rajentran, Addl.P.P.

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 the records relating to detention order passed in No.1179/BCDFGISSSV/2016, dated 28.11.2016, by the detaining authority against the detenu, by name Solaisamy, aged 22 years, S/o Bethraj, residing at No.2/70, East Street, R.Kallumadam, Aruppukottai Taluk, Virudhunagar District and quash the same.

2. The Inspector of Police, Kolathur 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. V-6 Kolathur Police Station, Cr.No.1004 of 2015, registered under Section 379 of the Indian Penal Code.
- ii. V-4-Rajamangalam Police Station, Cr.No.531 of 2016, registered under Section 379 of the Indian Penal Code.
- iii. V-6 Kolathur Police Station, Cr.No.591 of 2016, registered under Section 379 of the Indian Penal Code.
- iv. V-6 Kolathur Police Station, Cr.No.598 of 2016, registered under Section 379 of the Indian Penal Code.
- v. V-4-Rajamangalam Police Station, Cr.No.569 of 2016, registered under Section 379 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 29.09.2016, one Mohanraj, aged 54 years, son of Sivasankaran, residing at No.1, Vetrivel Nagar, First Street, Kolathur, Chennai-99, as defacto complainant, has given a complaint against the detenu, wherein it is alleged that in the place of occurrence, by showing a knife, the detenu has forcibly taken away a sum of Rs.2,000/- and also a Cell-phone from the custody of the defacto complainant. Under such circumstances, a case has been registered against the detenu in Crime No.619 of 2016 under Sections 341, 294(b), 323, 336, 397 and 596(ii) of the 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 subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as a 'Goonda' by way of passing the impugned detention order and in order to quash the same, the present petition has been filed by the brother 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 considering all the relevant materials and other connected documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as a '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. The learned counsel appearing for the petitioner has contended to the effect that in the ground case, the detenu has been arrested on 29.09.2016 and on the basis of confession alleged to have been given by him, he has been arrested in some of the adverse cases. Further on 29.09.2016 itself, in all the cases, including the ground case, the detenu has been arrested

and remanded to custody and subsequently, in the ground case and also in some of the adverse cases, remand has been extended. But, the remand has not been subsequently extended in the second adverse case registered in Crime No.531 of 2016 and further, after arresting the detenu, no proper information has been given to his near relatives/friends. Under such circumstances, the detention order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondents has contended that the sponsoring authority has submitted all the relevant materials to the detaining authority. The detaining authority after perusing the same, has rightly passed the impugned detention order and further, the factum of arrest has been duly intimated to the father of the detenu and under such circumstances, the contention put forth on the side of the petitioner is liable to be rejected.

8. It is seen from the grounds of detention that on 29.09.2016, one Mohanraj, as defacto complainant, has given a complaint against the detenu in V-6 Kolathur Police Station and the same has been registered in Crime No.619 of 2016. On the date of occurrence itself the detenu has been arrested and on the basis of his confession, he has been arrested in some of the adverse cases. But, as rightly pointed out on the side of the petitioner, there is no specific remand extension in respect of Crime No.531 of 2016, Rajamangalam Police Station. Further it is seen from the book-let that on 29.09.2016, the detenu has been arrested and the factum of arrest has been duly informed to his father. But in the arrest memo, no signature is found place. Therefore, it is quite clear that there is a clear lapse on the part of the detaining authority as well as on the part of sponsoring authority and the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India and on that ground alone, the detention order in question is liable to be quashed.

In fine, this Habeas Corpus Petition is allowed. The detention order dated 28.11.2016, passed in No.1179/BCDFGISSSV/2016, by the detaining authority against the detenu, by name Solaisamy, aged 22 years, S/o Bethraj, residing at No.2/70, East Street, R.Kallumadam, Aruppukottai Taluk, Virudhunagar District, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

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

2.The Commissioner of Police,
Vepery,
Chennai.

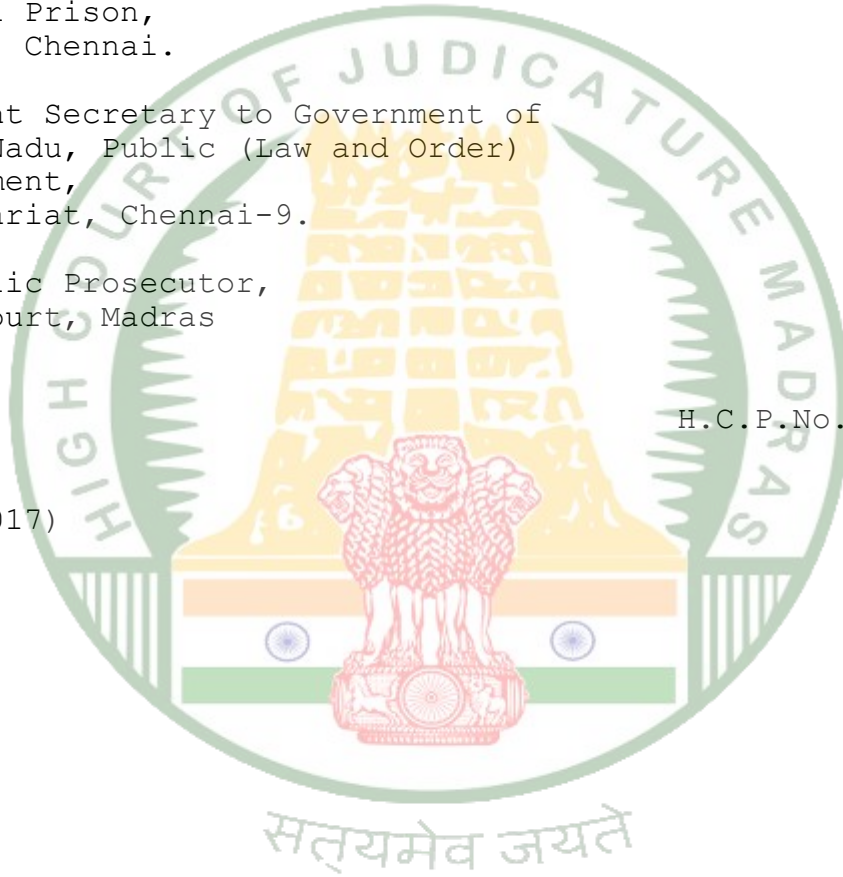
3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The Joint Secretary to Government of
Tamil Nadu, Public (Law and Order)
Department,
Secretariat, Chennai-9.

5.The Public Prosecutor,
High Court, Madras

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