

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2017

CORAM

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

H.C.P.No.404 of 2017

Selvi

.. Petitioner

Vs

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

2.The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai-7.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records relating to the detention order in No.37/BCDFGISSSV/2017 dated 30.01.2017, passed by the 2nd respondent under the Tamil Nadu Act 14/1982 and set aside the same and direct the respondent to produce the petitioner's husband Suriya @ Suriyraprakash, aged 36 years, S/o.Balan, the detenu, now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.E.Jai Shankar

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 No.37/BCDFGISSSV/2017

dated 30.01.2017 by the Detaining Authority against the detenu by name, Suriya @ Suriyaprakash, aged 36 years, S/o.Balan, residing at No.134/9, AIR Nagar, Tsunami Kudiyiruppu Lift Gate, Thiruvottiyur, Chennai-19 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 to the effect that the detenu has involved in the following adverse cases :

- i. Vellore Police Station Crime No.178/2014 registered under Sections 323, 363, 506[i] and 120[B] of IPC @ 323, 324, 365, 384, 506[ii] and 120[B] of IPC @ 323, 324, 365, 364 [A], 384, 506[ii] and 120[B] of IPC.
- ii. Vellore Taluk Police Station Crime No.415/2015 registered under Sections 363, 384 and 506[ii] of IPC @ 363, 342, 324, 385 and 506[ii] of IPC @ 363, 342, 324, 385, 506[ii] and 302 of IPC @ 120[b], 147, 148, 363, 342, 324, 385, 506[ii] and 302 of IPC.

3. Further, it is averred in the affidavit that one Annaselvi, aged 46 years, W/o.Manimaran, residing at No.25/11, Sathiyavanimuthu Street, GKM Colony, Chennai-82, as de facto complainant has given a complaint in K-5 Peravallore Police Station, wherein, it is alleged to the effect that her husband has been missing and under such circumstances, a case has been registered in Crime No.750/2016 under Section Man Missing. After sometime, the Investigating Officer has found the dead body of the husband of the de facto complainant and altered the Sections such as 365 and 302 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 to a subjective satisfaction that the detenu is a habitual offender and ultimately, branded him as goonda by 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 that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the materials to the Detaining Authority. The Detaining Authority after perusing all the relevant materials, has arrived to a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, passed the impugned Detention Order and the same does not call for any interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has raised the following points for quashing the impugned detention order :

- i. On the side of the detenu, a representation has been submitted and the same has not been disposed of without delay.
- ii. The detenu has been supplied with a booklet and most of the vital documents are not readable.
- iii. The bail application has been filed by the detenu is actually pending, whereas, in the detention order, it has been erroneously mentioned as dismissed.

7. Learned Additional Public Prosecutor has equally contended to the effect that the Sponsoring Authority has submitted all the relevant materials to the Detaining Authority. The Detaining Authority by way of applying his mind properly, has rightly branded the detenu as goonda by way of passing the impugned detention order and therefore, the contentions urged on the side of the petitioner are liable to be rejected.

8. The first and foremost point raised on the side of the petitioner is that on the side of the detenu, a representation has been submitted. But, in disposing of the same, there is a delay.

9. On the side of the respondents, a Proforma has been submitted, wherein, it is clearly stated that in between column Nos.7 and 9, 3 clear working days are available and in between column Nos.12 and 13, 1 clear working day is available.

10. The second point put forth on the side of the petitioner is that the detenu has been supplied with a booklet, wherein, most of the copies of documents are not legible/not readable.

11. In fact, this Court has perused the entire booklet and as rightly pointed out on the side of the petitioner, most of the copies of vital documents are not readable and the same would affect the rights of the detenu guaranteed under Article 22[5] of the Constitution of India.

12. The third point raised on the side of the petitioner is that on the side of the detenu, a bail application has been filed and the same is pending at the time of passing the impugned detention order, whereas, the Detaining Authority without applying his mind has erroneously observed that the said bail application has been dismissed and therefore, he has not applied his mind properly.

13. Considering the overall points raised on the side of the petitioner, this Court is of the view that the Detaining

Authority without applying his mind properly, has erroneously passed the impugned detention order and further in disposing of the representation submitted on the side of the detenu, there is a delay and the same has not been explained. Under such circumstances, the impugned detention order is liable to be quashed.

14. In fine, this petition is allowed. The Detention Order dated 30.01.2017 passed in No.37/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Suriya @ Suriyaprakash, aged 36 years, S/o.Balan, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant 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 of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.
- 3.The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai-7.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai 66.
[in duplicate for communication to the detenu]
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.404 of 2017

SP(21/08/2017)