

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2017

CORAM

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

H.C.P.No.416 of 2017

Raji

... Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

2.The Commissioner of Police,
Greater Chennai Police,
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 of the detention made in Memo No.52/BCDFGISSSV/2017 dated 13.02.2017 passed by the Commissioner of Police, Greater Chennai Police, Vepery, Chennai-7 the 2nd respondent herein and set aside the same and direct the respondents to produce the detenu before this Court and set the detenu Thiyagu @ Thiyagarajan, aged 25 years, S/o.Raji, now confined in Central Prison, Puzhal-II, Chennai at liberty.

For Petitioner : Mr.R.Balakrishnan

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.52/BCDFGISSSV/2017

dated 13.02.2017 by the Detaining Authority against the detenu by name, Thiyaagu @ Thiyaagarajan, aged 25 years, S/o.Raji and quash the same.

2. The Inspector of Police, P-1, Pulianthope 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. P-1 Pulianthope Police Station Crime No.1203/2016 registered under Sections 147, 148, 341, 324 and 506[ii] of Indian Penal Code.
- ii. P-1 Pulianthope Police Station Crime No.2045/2016 registered under Sections 450 and 307 of Indian Penal Code.
- iii. P-4 Basin Bridge Police Station Crime No.1322/2016 registered under Sections 341, 294[b], 385 and 506[ii] of Indian Penal Code.

3. Further, it is averred in the affidavit that on 21.12.2016, one Nandha, S/o.Elumalai, residing at No.52, M.S.Muthu Nagar, Kannikapuram, Chennai-12, as de facto complainant has given a complaint against the detenu and others, wherein, it is alleged that on 21.12.2016 at about 08.30 hrs, while the de facto complainant has proceeded to perform his work, the detenu has wrongly intercepted him, scolded him by using filthy words and also attacked him by using deadly weapons and in the said circumstances, the complaint given by him has been registered in Crime No.2063/2016 under Sections 341, 294[b], 392, 397, 336 and 506[ii] r/w 34 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 at 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 father of the detenu as petitioner.

5. On the side of the respondents, a detailed counter has been filed, wherein, it has been contended inter alia to the effect that most of the averments made in the petition are false. The Sponsoring Authority has supplied all the materials 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 ultimately, passed 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 petitioner 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 given by the petitioner has been 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, 5 clear working days are available. Likewise, in between column Nos.12 and 13, 2 clear working days are available and no explanation has been given on the side of the respondents 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 13.02.2017 passed in No.52/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Thiyaagu @ Thiyaagarajan, aged 25 years, S/o.Raji, is quashed and directed to set him at liberty, unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gya

To

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

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

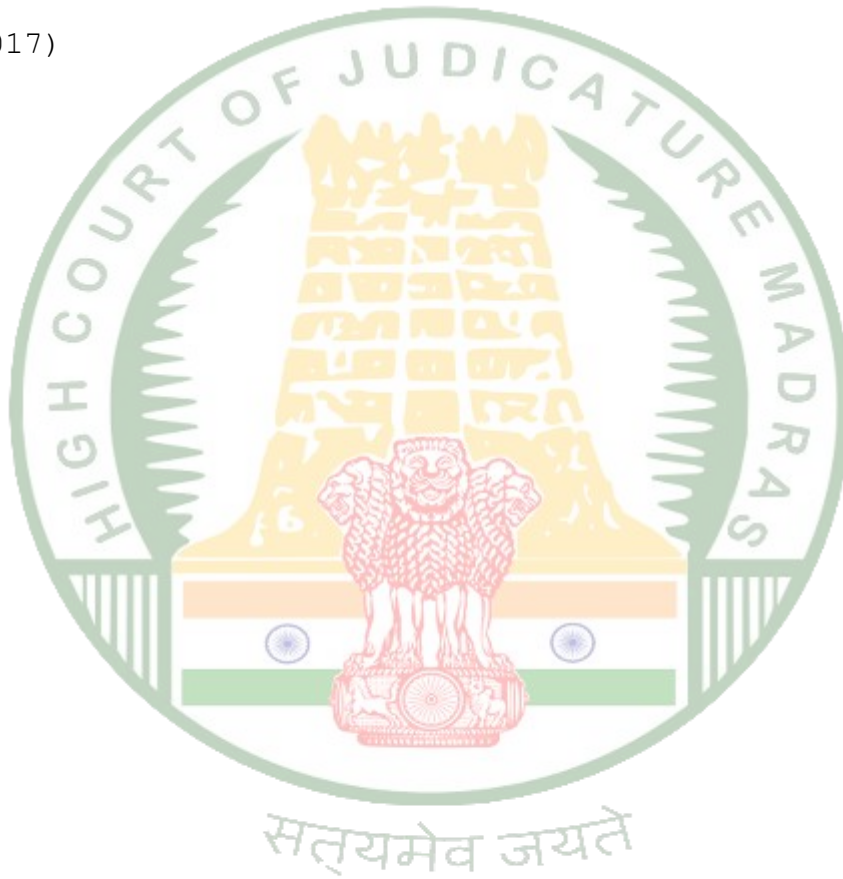
3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent ,
Central Prison,Puzhal -II,
Chennai.

5.The Joint Secretary to Government,
Public(L & O),
Fort St.George, Chennai

H.C.P.No.416 of 2017

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