

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2017

CORAM

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

H.C.P.No.436 of 2017

K.Robert

.. Petitioner

Vs

1. The State of Tamil Nadu
Rep. by Secretary to the Government
Home, Prohibition and Excise Department
Fort St. George
Chennai- 600 009

2. The Commissioner of Police
Office of the Commissioner of Police
Vepery, Chennai - 600 007

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records pertaining to the Detention Order passed against the petitioner's son James (TPDA No.8747) by the 2nd respondent herein in BCDFGISSSV No.9/2017 dated 09.01.2017 and quash the same and further direct the respondents to produce the body of the petitioner's son James (TPDA No.8747) aged 27 years before this Court and set him at liberty from the Central Prison, Puzhal, Chennai.

For Petitioner : Mr.C.C.Chellappan

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 09/BCDFGISSSV/2017 dated 09.01.2017, against the detenu by name, James, aged 27 years, S/o.Robert, No.2/203 Bajanai Kovil Street, Padur Colony, Thiruporur Taluk, Kanchipuram District and quash the same.

2. The Inspector of Police, J-13 Taramani 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) Kelambakkam Police Station, Crime No.712 of 2016, registered under Sections 379 of Indian Penal Code;

ii) Kelambakkam Police Station, Crime No.713 of 2016, registered under Sections 379 of Indian Penal Code;

iii) Kelambakkam Police Station, Crime No.722 of 2016, registered under Sections 379 of Indian Penal Code; and

iv) J13, Taramani Police Station, Crime No.1800 of 2016, registered under Sections 392 and 506(ii) of Indian Penal Code.

3. Further it is averred in the affidavit that on 20.11.2016, one Tamizhalagan, aged 25 years, S/o.Selvaraj, residing at No.2, V.V.Kovil Street, M.G.R.Nagar, Tharamani, as defacto complainant, has given a complaint in J-13 Taramani Police Station, wherein it is averred to the effect that on the same day at about 06.30 hours, the present detenu and others have unlawfully deterred the de facto complainant and by showing a deadly weapon, forcibly taken away a sum of Rs.1250/- from the shirt pocket of the defacto complainant and also threatened him. Under such circumstance, a case has been registered in Crime No.1810 of 2016 under Sections 341, 323, 336, 427, 392 r/w.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 perusing 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 father of the detenu, as petitioner.

5. On the side of the respondents, counter has not been filed. Under such circumstances, the present petition is disposed of on merits on the basis of available materials on record.

6. The learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, two representations have been given, but the same have 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 representations submitted on the side of the detenu have been duly disposed of without delay and therefore, the contention put forth 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 respect of first representation, in between column Nos.7 and 9, 9 clear working days are available and in between column Nos. 12 and 13, 6 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 09.01.2017 passed in BCDFGISSSV No.09 of 2017 by the second respondent against the detenu by name, James, aged 27 years, S/o.Robert, No.2/203 Bajanai Kovil Street, Padur Colony, Thiruporur Taluk, Kanchipuram 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 V)

//True Copy//

Sub Assistant Registrar

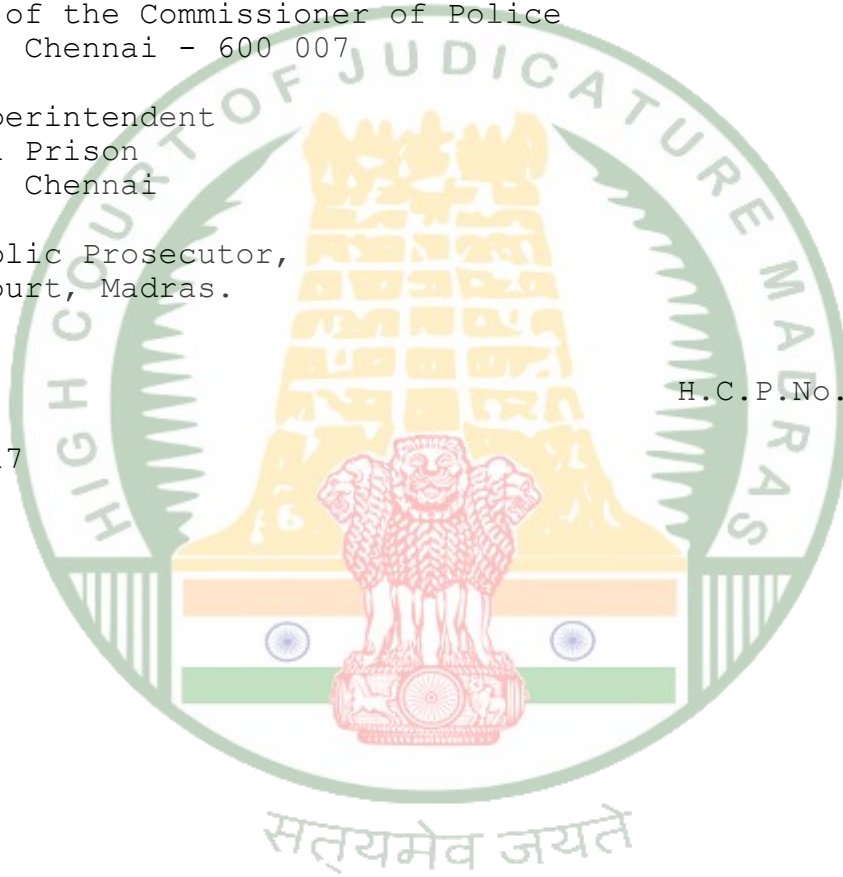
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To

1. The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
2. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat
Chennai- 600 009
3. The Commissioner of Police
Office of the Commissioner of Police
Vepery, Chennai - 600 007
4. The Superintendent
Central Prison
Puzhal, Chennai
5. The Public Prosecutor,
High Court, Madras.

AR(CS V)
CS/29/08/17

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