

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE M.DHANDAPANI

H.C.P.No.459 of 2017

Nasima Bagum .. Petitioner /Mother of detenue

Vs

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

2.The District Magistrate and District Collector,
Tiruppur District, Tiruppur.

3.The Superintendent of Police,
Central Prison,
Coimbatore.

... 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 connected with the detention order of the 2nd respondent in Cr.M.P.No.01/Goonda/2017 dated 27.02.2017 and quash the same and direct the respondents to produce the body and person of the petitioner's son namely Yasar Arafath, aged 23 years, S/o.Mohammed Nowsath, detained in Central Prison, Coimbatore, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Mohamed Ansar

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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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 Cr.M.P.No.01/Goonda/2017 dated 27.02.2017 by the Detaining Authority against the detenu by name, Yasar Arafath, aged 23

years, S/o.Mohammed Nowsath, residing at backside of Sanjay Hospital, Near oil godown, Palani, Dindigul District and quash the same.

2. The Inspector of Police, Dharapuram 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. Dharapuram Police Station Crime No.578/2016 registered under Section 392 of the Indian Penal Code.
- ii. Dharapuram Police Station Crime No.607/2016 registered under Section 457 and 380 of the Indian Penal Code.
- iii. Moolanur Police Station Crime No.616/2016 registered under Section 392 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 09.01.2017, one Lakshmanasamy, S/o.Kumarasamy, Ullukattu Thottam, Undarapatti, Dharapuram Taluk, Tiruppur District, as de facto complainant has given a complaint in Dharapuram Police Station, wherein, it is alleged to the effect that in the place of occurrence, the detenu and others have snatched three gold chains from the custody of the wife of the de facto complainant and at such circumstances, a case has been registered in Crime No.15/2017 registered under Section 392 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 perusing the averments made in the affidavit and other connected documents, has arrived at 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 mother of the detenu as petitioner.

5. On the side of the respondents, counter has not been filed and therefore, the present Habeas Corpus Petition is disposed of on merits on the basis of available materials on record.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, two representations are submitted, but the same are not 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 representations submitted on the side of the detenu have 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 is clearly stated that in respect of 1st representation, in between column Nos.7 to 9, 8 clear working days are available and in between column Nos.12 and 13, 28 clear working days are available. Likewise, in respect of 2nd representation, in between column Nos.7 to 9, 12 clear working days are available and in between column Nos.12 and 13, 29 clear working days are available and no explanation has been given on the side of the respondents for such huge delay 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 27.02.2017 passed in Cr.M.P.No.01/Goonda/2017 by the Detaining Authority against the detenu by name, Yasar Arafath, aged 23 years, S/o.Mohammed Nowsath, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

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

2.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.

3.The District Magistrate and District Collector,
Tiruppur District, Tiruppur.

4.The Superintendent,
Central Prison, Coimbatore.
[in duplicate for communication to the detenu]

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.459 of 2017

VGII(CO)
NR 14/09/2017