

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

CORAM

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

H.C.P.No.473 of 2017

S.Nithya

... Petitioner

Vs

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

2.The Commissioner of Police,  
Salem City, Salem District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the production of the records relating to the detention order dated 02.01.2017 made in detention order in C.M.P.No.1/Goonda/Salem City/2017 passed by the 2nd respondent herein quash the same and direct the respondents to produce the body of the detenu Sathishkumar, aged 36 years, S/o.Sundarrajan, who has been detained in Central Prison at Salem before this Hon'ble Court and set at liberty.

For Petitioner : Mr.M.Senthilkumar

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 C.M.P.No.1/Goonda/Salem City/2017 dated 02.01.2017 by the Detaining Authority against the detenu by name, Sathishkumar, aged 36 years, S/o.Sundararajan, residing at No.8-B, Mariamman Kovil Street, Manakkadu, Hasthampatty, Salem-7 and quash the same.

2. The Inspector of Police, Shevapet 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. Shevapet Police Station Crime No.442/2014 registered under Sections 392 @ 379 of IPC.
- ii. Hasthampatty Police Station Crime No.502/2015 registered under Sections 392 of IPC.
- iii. Hasthampatty Police Station Crime No.156/2016 registered under Sections 387 and 506[iii] of IPC.

3. Further, it is averred in the affidavit that on 16.12.2016 at about 09.15 hours, one Naganathan, S/o.Veerapathiran, as de facto complainant has given a complaint against the detenu in Shevapet Police Station, wherein, it is stated that in the place of occurrence, the detenu has taken away a sum of Rs.1,500/- from the shirt pocket of the detenu by using a deadly weapon and also threatened him and at such circumstances, a case has been registered in Crime No.592/2016 under Sections 341, 392, 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 considering 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 sister of the detenu as petitioner.

5. Despite repeated adjournments, on the side of the respondents counter has not been filed and therefore, the present petition is disposed of 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, a representation has been submitted to the concerned authorities and 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 to the effect that the representation submitted on the side of the detenu has been duly disposed of without delay and therefore, the contention urged on the side of the detenu is liable to be rejected.

8. On the side of the respondents, a proforma has been submitted, wherein, it is clearly stated that in between column Nos.7 and 9, 4 clear working days are available and in between column Nos.12 and 13, 28 clear working days are available and no explanation has been given on the side of the respondents with regard to such a 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 02.01.2017 passed in C.M.P.No.1/Goonda/Salem City/2017 by the Detaining Authority against the detenu by name, Sathishkumar, aged 36 years, S/o.Sundarrajan, 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 VIII)

//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,  
Government of Tamil Nadu,  
Home, Prohibition and Excise Department,  
Fort St. George, Chennai-9.
- 3.The Commissioner of Police,  
Salem City, Salem District.
- 4.The Superintendent,  
Central Prison, Salem.  
[in duplicate for communication to the detenu]
- 5.The Public Prosecutor,  
High Court, Madras.

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CA(07/08/2017)