

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.07.2017

CORAM

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

H.C.P.No.490 of 2017

A.Vijayakumar

.. Petitioner

Vs

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

2. The District Collector and District Magistrate
Kanchipuram District
Kanchipuram

.. 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, relating to the Detention Order passed by the second respondent pertaining to the order made in B.C.D.F.G.I.S.S.S.V No.67 of 2016 dated 21.12.2016 against the petitioner's mother Selvi.W/o.Arumugam, aged about 47 years, who is confined at Special Prison for Women, Puzhal, Chennai - 600 066 and set aside the same and direct the respondents to produce the detainee before this Court and set her at liberty.

For Petitioner : Mr.A.Venkatesan

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 BCDFGISSSV No.67 of 2016 dated 21.12.2016, against the detenu by name, Selvi, w/o.Arumugam, aged 47 years residing at Navakkal Colony, Koovathurpettai, Cheyyur Taluk, Kancheepuram District and quash the same.

2. The Inspector of Police, Prohibition Enforcement Wing, Mamallapuram at Thirukalukundram, 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) Prohibition Enforcement Wing, Mamallapuram at Thirukalukundram, Crime No.229 of 2016, registered under Sections, 4(1)(aaa) Tamil Nadu Prohibition Act r/w. 6 & 11 of Rectified Spirit Rules, 2000; and

ii) Prohibition Enforcement Wing, Mamallapuram at Thirukalukundram, Crime No.636 of 2016, registered under Sections, 4(1)(aaa) and 4(1-A) Tamil Nadu Prohibition Act r/w. 6 & 11 of Rectified Spirit Rules, 2000.

3. Further, it is averred in the petition that on 23.11.2016, the Inspector of Police, Prohibition Enforcement Wing and others have conducted prohibition raid and in the place of occurrence they found that the detenu was in possession of illicit arrack without licence and consequently, a case has been registered against her in Crime No.644 of 2016 under Sections 4 (1) (aaa) and 4(1-A)ii of Tamil Nadu Prohibition Act, 1937 r/w. 6 & 7 of Tamil Nadu Rectified Spirit Rules, 2000 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 materials, has derived a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded her as "Bootlegger" by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the son of the detenu, as petitioner.

5. On the side of the respondents, a counter has been filed, wherein, it is averred that most of the averments made in the petition are false. The Sponsoring Authority has submitted all

the materials records to the Detaining Authority and the Detaining Authority, after considering the averments made in the affidavit and other connected materials has derived a subjective satisfaction to the effect that the detainee is a habitual offender, has rightly passed the impugned Detention Order and the same does not suffer from any infirmity and therefore, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has contended to the effect that on 23.11.2016, the detainee has been arrested and remanded to custody and a formal arrest and also remand have been made in respect of Crime No.636 of 2016. But no remand order has been annexed in the booklet and the same would affect the rights of the detainee and therefore, the Detention Order in question is liable to be quashed.

7. In fact, this Court has perused all the relevant records wherein it is clearly stated that only in the ground case, on 23.11.2016, the detainee has been arrested. As advert to earlier, against the detainee, two adverse cases have been instituted. The main grievance expressed on the side of the petitioner is that in Crime No.636 of 2016, a formal arrest and also remand order have been passed, but a copy of the same is not found in the booklet. As rightly pointed out on the side of the petitioner, the arrest as well as the remand made in respect of Crime No.636 of 2016 are not found in the booklet and in fact the same would affect the rights of the detainee in submitting a representation for proper disposal. On that ground alone, the Detention Order in question is liable to be quashed.

8. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 21.12.2016 passed in Detention Order No. BCDFGISSSV No.67 of 2016 by the second respondent against the detainee by name, Selvi.W/o.Arumugam, aged about 47 years, who is confined at Special Prison for Women, Puzhal, Chennai - 600 066 is quashed and directed to set her at liberty forthwith unless she is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

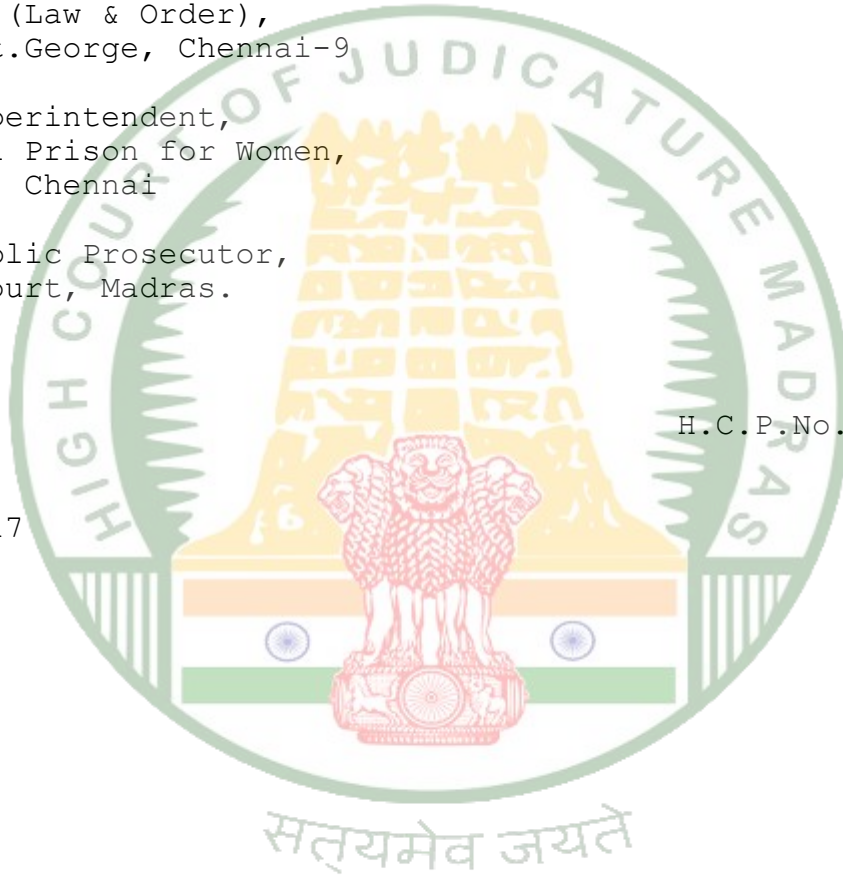
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To

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai - 600 009
2. The District Collector and District Magistrate
Kanchipuram District
Kanchipuram
3. The Joint Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai-9
4. The Superintendent,
Central Prison for Women,
Puzhal, Chennai
5. The Public Prosecutor,
High Court, Madras.

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CS/19/07/17



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