

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.09.2017

CORAM

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

H.C.P.No.492 of 2017

Chinnaponnu

.. Petitioner

Vs

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

2.The District Collector and The District Magistrate,
Vellore District, Vellore. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records in connection with the order of detention passed by the 2nd respondent dated 06.03.2017 in his office Ref.C3.D.O.No.25/2017 against the petitioner's son Siva, aged 32 years, S/o.Perumal, now confined at Central Prison, Vellore, Vellore District and set aside the same and direct the respondents to produce the above said detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.E.Kannadasan

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

W E B C O P Y
[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 C3.D.O.No.25/2017 dated 06.03.2017 by the Detaining Authority against the detenu by name, Siva, aged 32 years, S/o.Perumal, residing at No.3/58, Pillaiyar Koil Street, Narasingapuram Village, Pandiyanallur

Post, Arakkonam Taluk, Vellore District and quash the same.

2. The Inspector of Police, Kondapalayam 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 case :

- i. Kondapalayam Police Station Crime No.26/2016 registered under Sections 4[1][a], 4[1-A][ii] of Tamil Nadu Prohibition Act, 1937 @ 4[1][a] of Tamil Nadu Prohibition Act, 1937 [Act 10/1937].
- ii. Arakkonam PEW Crime No.418/2016 registered under Sections 4[1][a], 4[1-A][ii] of Tamil Nadu Prohibition Act, 1937 @ 4[1][a] of Tamil Nadu Prohibition Act, 1937 [Act 10/1937].
- iii. Kondapalayam Police Station Crime No.04/2017 registered under Sections 4[1][a], 4[1-A][ii] of Tamil Nadu Prohibition Act, 1937 @ 4[1][a] of Tamil Nadu Prohibition Act, 1937 [Act 10/1937].

3. Further, it is averred in the affidavit that on 16.02.2017, the Sub Inspector of Police, Venkatesan and other Police Constables attached to Kondapalayam Police Station have made a vigilant watch in Pulivalam burial ground compound and they found that the detenu is in possession of 110 litres of country arrack in two lorry tubes and after observing due formalities, a case has been registered in Crime No.46/2017 under Sections 4[1][i], 4[1][aaa] and 4[1-A]ii of Tamil Nadu Prohibition Act, 1937 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 to a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him 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 mother of the detenu as petitioner.

5. On the side of the respondents, counter has been filed, wherein, it is clearly stated to the effect that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the relevant materials to the Detaining Authority. The Detaining Authority after perusing all the relevant materials and other connected papers, has arrived to 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 detenu, a representation has been given, 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 to the effect that the representation submitted on the side of the petitioner has been duly considered 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 between column Nos.7 to 9, 6 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 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 06.03.2017 passed in C3.D.O.No.25/2017 by the Detaining Authority against the detenu by name, Siva, aged 32 years, S/o.Perumal, 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 II)

//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,
Home, Prohibition and Excise [XVI] Department,
Fort St. George, Secretariat, Chennai-9.

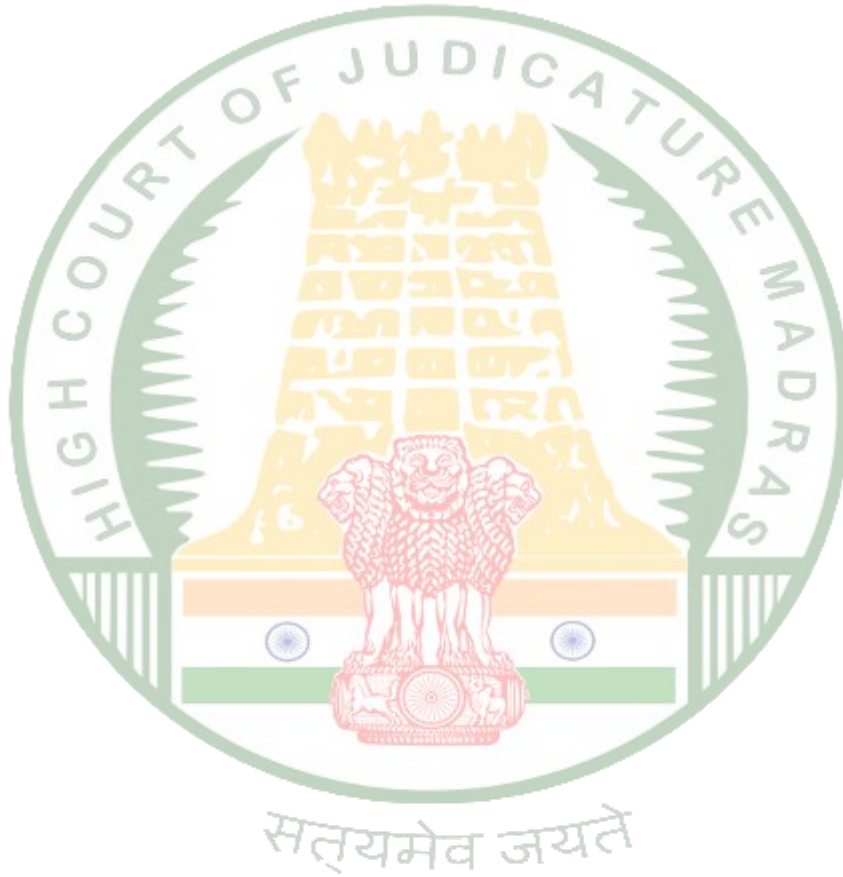
3.The District Collector and The District Magistrate,
Vellore District, Vellore.

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

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.492 of 2017

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GN(11/09/2017)



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