

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.09.2017

CORAM

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

H.C.P.No.522 of 2017

Jayamani

.. 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
Salem District

3. The Superintendent
Central Prison
Salem

... 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 leading to the detention of petitioner's son Boss Kesavan @ Kesavan, aged about 33 years, Son of Ulaganathan, presently detained in Central Prison, Salem under Act 14/1982, as a "Goonda" vide the detention order dated 24.03.2017 in C.M.P.No.16/"GOONDA"/C2/2107 on the file of the 2nd respondent herein directing to produce the person or body of the detenu before this Court and thereafter set him at liberty from the Central Prison, Salem by setting aside the above order.

For Petitioner : Mr.B.Vasudevan

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 C.M.P.No.16/GOONDA/C2/2017 dated 24.03.2017, against the detenu by name, Boss Kesavan @ Kesavan, aged 33 years, S/o.Ulaganathan, Koolippatti Village, Kadathur Agraharam, Chinna Seeragapadi Post, Attaiyampatti Police Station Limit, Salem South Taluk, Salem District and quash the same.

2. The Inspector of Police, Attaiyampatti 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) Salem District, Attaiyampatti Police Station, Crime No.64 of 2014, registered under Section 174(ii) Cr.P.C @ Sections 302 and 397 of the Indian Penal Code;

ii) Salem District, Attaiyampatti Police Station, Crime No.137 of 2014, registered under Section 307 @ 302 of the Indian Penal Code; and

iii) Salem District, Attaiyampatti Police Station, Crime No.332 of 2015, registered under Section 392 @ 395 of the Indian Penal Code;

3. Further it is averred in the affidavit that on 24.12.2016, One Dhandayuthabani, Son of Rajamanickam, residing at S.Papparappati Post, Attaiyampatti Police Station Limit, Salem District, as defacto complainant, has given a complaint wherein it is alleged to the effect that in the place of occurrence, the present detenu and others have forcibly taken away a sum of Rs.3000/- from the custody of the defacto complainant. Under such circumstances, a case has been registered in Crime No.551 of 2016 under Section 392 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 mother of the detenu, as petitioner.

5. On the side of the respondents, counter has not been filed. Under such circumstance, this 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, 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. The learned Additional Public Prosecutor has also equally contended to the effect that the representation submitted on the side of the detenu has been duly disposed of without delay and therefore, the Detention Order need not be quashed.

8. On the side of the respondents, a proforma has been submitted, wherein, it has been clearly stated that in between column Nos.7 and 9, 7 clear working days are available and in between column Nos.12 and 13, 25 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.

9. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 24.03.2017 passed in C.M.P.No.16/GOONDA/C2/2017 by the Detaining Authority against the detenu by name, Boss Kesavan @ Kesavan, aged 33 years, S/o.Ulaganathan is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-

सत्यमेव जयते
Asst.Registrar (CS II)

/true copy/

Sub Asst. 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 Department
Fort St. George
Chennai - 600 009
3. The District Collector and District Magistrate
Salem District
4. The Superintendent
Central Prison
Salem
[in duplicate for communication to the detenu]
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.522 of 2017

GP(CO)
VR(19/09/2017)



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