

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.555 of 2017

Abdul Wahab .. Petitioner/Brother of the Detenue

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 Commissioner of Police/
Detaining Authority
Hosur Road
Coimbatore City
Coimbatore District

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 petitioner's brother detention under Tamil Nadu Act 14 of 1982 vide Detention Order Dated 11.04.2017 on the file of the second respondent herein made in proceedings Memo C.No.26/G/IS/2017, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's brother, namely A.Saddam Hussein @ Saddam, S/o.Abdul Nazeer, aged 28 years, detained in Central Prison, Coimbatore, before this Court and set the petitioner's brother at liberty from detention.

For Petitioner : Mr.W.Camyles Gandhi

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.No.26/G/IS/2017 dated 11.04.2017, against the detenu by name, A.Saddam Hussein @ Saddam, aged 28 years, S/o.Abdul Nazeer, residing at Door No.26/2, Bilal Estate, 2nd Street, Ukkadam, Coimbatore and quash the same.

2. The Inspector of Police, B-1, Bazaar Police Station, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred that on 17.03.2017 one Tmt.Rasheedha w/o.Farooq, Door No.63/2, Bilal Estate, 1st Street, South Ukkadam, Coimbatore, as defacto complainant, has given a complaint in B1 Bazaar Police Station, Coimbatore wherein it is averred that on 16.03.2017 at about 24 hours, the detenu and others have attacked one Farooq, who is none other than the husband of the defacto complainant and due to this overt act he passed away. Under the said circumstances, a case has been registered in Crime No.258 of 2017, under Section 302 IPC and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

3. 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 has committed a grave offence 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 brother of the detenu, as petitioner.

4. In the counter filed on the side of the respondents, 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. The Detaining Authority, after considering the gravity of offence alleged to have been committed by the detenu, has rightly branded him as "Goonda" and therefore, there is no infirmity or illegality in the order passed by the Detaining Authority and the present petition deserves to be dismissed.

5. 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.

6. Per contra, the learned Additional Public Prosecutor has contended 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.

7. 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, 6 clear working days are available and in between column Nos.12 and 13, 10 clear workings days are available and no explanation has been given on the side of the respondents with regard to such huge delay and that the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India.

8. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 11.04.2017 passed in C.No.26/G/IS/2017 by the second respondent against the detenu by name, A.Saddam Hussein @ Saddam, aged 28 years, S/o.Abdul Nazeer, residing at Door No.26/2, Bilal Estate, 2nd Street, Ukkadam, Coimbatore 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 V)

/true copy/

Sub Asst. Registrar

gpa

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai - 600 009

2. The Commissioner of Police/
Detaining Authority
Coimbatore City
Coimbatore District

3. The Superintendent,
Central Prison,
Coimbatore.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St.George
Chennai.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.W.Camyles Gandhi, Advocate in sr.no.50298

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KJ(CO)
NR 18/07/2017



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