

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2017

CORAM

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

H.C.P.No.558 of 2017

Sarath Kumar

... Petitioner/
Brother of the detenu

Vs

1.State of Tamil Nadu

Rep. By its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George
Chennai

2.The Commissioner of Police

The Commissioner Office
Vepery, Chennai - 600 007

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for records of the detention made in 88/BCDFGISSSV 2017 dated 29.03.2017 passed by the 2nd respondent and set aside the same and direct the respondents to produce the detenu before this Court and set the detene Nagarjun, S/o.Jothimani, aged 23 years, confined at Central Prison, Puzhal, at liberty.

For Petitioner : Mr. K.S.Kaviarasu

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 Memo No.88/BCDFGISSSV/2017 dated 29.03.2017, against the detenu by

name, Nagarjun, aged 23 years, S/o.Jothimani, No.18/65, First Street, Rajamangalam, Villivakkam, Chennai - 600 049 and quash the same.

2. The Inspector of Police, Rajamangalam Police Station, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred that the detenu has involved in the following adverse case:-

1. V-4, Rajamangalam Police Station, Crime No.49 of 2016, registered under Section 379 of Indian Penal Code;
2. V-4, Rajamangalam Police Station, Crime No.515 of 2016, registered under Section 379 of Indian Penal Code;
3. V-4, Rajamangalam Police Station, Crime No.229 of 2017, registered under Section 379 of Indian Penal Code; and
4. T-3 Korattur Police Station, Crime No.396 of 2017, registered under Section 379 of Indian Penal Code;

3. Further, it is averred in the affidavit that on 24.02.2017, one Arumugam S/o.Vellai residing at No.170, 4th street, Bharat Rajiv Gandhi Nagar, Kolathur, Chennai-99, as defacto complainant, has given a complaint in V-4 Rajamangalam Police Station, wherein it is stated to the effect that in the place of occurrence by showing a knife, the detenu has forcibly taken a sum of Rs.350/- and also cellphone from the defacto complainant and further, the detenu has tried to attack the defacto complainant. Under the said circumstance, a case has been registered in Crime No.268 of 2017 under Sections 341, 294 (b), 336, 427, 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 materials, 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 father of the detenu, as petitioner.

5. Despite repeated adjournments, counter has not been filed on the side of the respondents. Hence, the Habeas Corpus Petition is disposed of on merits on the basis of available records.

6. The learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, two representations have been submitted to the concerned authorities, but the same have 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 contended that the representations submitted on the side of the detenu have been duly disposed of without delay and therefore, the contention urged 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 respect of first representation in between Column Nos.12 and 13, 26 clear working days are available and likewise, in respect of second representation, in between column numbers 7 and 9, 3 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 huge delay and that 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 Habeas Corpus Petition is allowed and the Detention Order dated 29.03.2017 passed in 88/BCDFGISSSV/2017 by the second respondent against the detenu by name, Nagarjun, aged 23 years, S/o.Jothimani, No.18/65, First Street, Rajamangalam, Villivakkam, Chennai - 600 049 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 III)

/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 Joint Secretary to Government,
Public (Law & Order)
Fort St.George, Chennai-9.

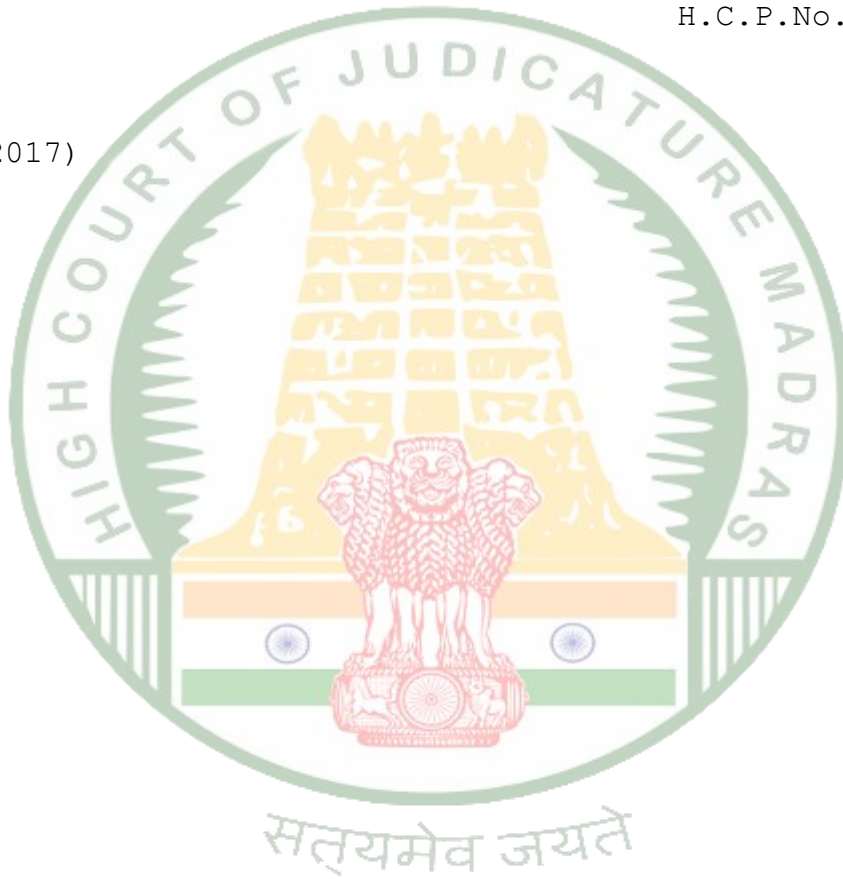
3. The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai-7.

4. The Superintendent
Central Prison, Puzhal
Chennai - 66

5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.558 of 2017

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