

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2017

CORAM

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

H.C.P.No.564 of 2017

Shippana Parvin

.. Petitioner

Vs

1.The Secretary of Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-9.

2.The Commissioner of Police/Detaining Authority,
Hozur Road, Coimbatore City,
Coimbatore-18.

.. 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 husband detention under Tamil Nadu Act 14/1982 vide detention order, dated 11.04.2017 on the file of the 2nd respondent herein made in proceedings Memo C.No.27/G/IS/2017, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's husband namely S.Akram Zindha, aged 24 years, S/o.Subhahani, before this Hon'ble High Court and set the petitioner's husband at liberty from detention, now the petitioner's husband is detained at Central Prison, Coimbatore.

For Petitioner : Mr.C.D.Sugumar
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 records relating to the detention order passed in C.No.27/G/IS/2017 dated 11.04.2017 by the Detaining Authority against the detenu

by name, S.Akram Zindha, aged 24 years, S/o.Subhahani, residing at No.58/2, Sumaiya Manzil, Near Fathima Nagar Pallivasal, Karumbukkadai, Coimbatore and quash the same.

2. The Inspector of Police, B-1 Bazaar Police Station, Coimbatore 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. Coimbatore City D-4 Kuniamuthur Police Station Crime No.656/2016 registered under Sections 341, 323, 324, 506 [ii] and 379 of Indian Penal Code @ 341, 323, 324 and 506 [ii] of Indian Penal Code @ 341, 323, 326 and 506[ii] of Indian Penal Code.

3. Further, it is averred in the affidavit that on 17.03.2017, one Rasheedha, W/o.Farooq has given a complaint in B-1 Bazaar Police Station, wherein, it is averred that her husband has been murdered brutally near Ukkadam by-pass road, Coimbatore and consequently, a case has been registered in Crime No.258/2017 under Sections 302 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 documents, has arrived at a subjective satisfaction to the effect that the detenu is in the habit of committing crimes one after another and also considering the gravity of offence alleged to have been committed by the detenu, branded him as goonda by way of passing the impugned Detention Order and in order to quash the same, the wife of the detenu has filed the present petition as petitioner.

5. On the side of the respondents, a counter has been filed, wherein, it has been contended inter alia to the effect that most of the averments made in the petition are false. The Sponsoring Authority has supplied all the materials to the Detaining Authority. The Detaining Authority after perusing all the materials, has arrived at 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 the same does not suffer from any infirmity or illegality and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has raised the following points :

- i. The detenu has not filed any bail application in ground case which has been registered under Section 302 of Indian Penal Code. But, the Detaining Authority without

applying his mind has observed that there is a likelihood of coming out of bail in the ground case.

ii. The detenu has given a representation, but the same has not at all been considered.

7. Per contra, the learned Additional Public Prosecutor has submitted that on the side of the detenu, no representation has been submitted to any authority and therefore, the contentions urged on the side of the detenu are liable to be rejected.

8. It is seen from the records that the detenu has already involved in an adverse case registered in Crime No.656/2016 under Sections 341, 323, 326 and 506[ii] of Indian Penal Code. It is also equally an admitted fact that the ground case has been registered in Crime No.258/2017 only under Section 302 of Indian Penal Code. As rightly pointed out on the side of the petitioner, no bail application has been filed in ground case. Since no bail application has been filed in the ground case, the Detaining Authority without ascertaining the actual fact, has erroneously observed to the effect that there is a likelihood of coming out of bail in the ground case.

9. Further, it is seen from the records that on the side of the detenu, a representation has been given to the Home Secretary and other authorities. But so far, there is no indication with regard to the disposal of the same.

10. Considering the above said factual aspects, this Court is of the view that the Detention Order passed against the detenu is liable to be quashed.

11. In fine, this petition is allowed. The Detention Order dated 11.04.2017 passed in C.No.27/G/IS/2017 by the Detaining Authority against the detenu by name, S.Akram Zindha, aged 24 years, S/o.Subhahani, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary of Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-9.
- 2.The Commissioner of Police/Detaining Authority,
Hozur Road, Coimbatore City,
Coimbatore-18.
- 3.The Superintendent (with Duplicate)
Central Prison, Coimbatore.
- 4.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort.St.George, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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KS (CO)
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