

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2017

CORAM

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

H.C.P.No.565 of 2017

N.Nandhini

.. Petitioner

Vs

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

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records pertaining to the impugned detention order vide Memo No.113/BCDFGISSSV/2017 dated 03.04.2017 passed by the 2nd respondent herein and approved by the 1st respondent herein and quash the same as illegal and consequently direct the respondents to produce the detenu Narayanan, S/o.Narasimma Rao, aged 32 years, now confined at Central Prison, Puzhal, Chennai, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.Swamidoss Manoharan
for Mr.S.Ramkumar

For Respondents : Mr.V.M.R.Rajentran,
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 No.113/BCDFGISSSV/2017 dated 03.04.2017 by the Detaining Authority against the detenu by name, Narayanan, aged 32 years, S/o.Narasimma Rao, residing

at No.36, 1st Street, Bakthavachalam Colony, Vadapalani, Chennai-26 and quash the same.

2. The Inspector of Police, Anti Vice Squad 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. Anti Vice Squad Crime No.87/2015 registered under Sections 3[2]a, 4[1] and 5[1][a] of Immoral Traffic Prevention Act, 1956.
- ii. Anti Vice Squad-I, Crime No.99/2016 registered under Sections 4[1] and 5[1][a] of Immoral Traffic Prevention Act, 1956.

3. Further it is averred in the affidavit that on 13.03.2017, the detenu has approached one Nithiyanandha, Police Constable and instigated him to involve in immoral traffic offences and in such circumstances, a case has been registered in Crime No.41/2017 under Sections 3[2]a, 4[1], 5[1][a], 6[1] and 7[1] of Immoral Traffic Prevention Act, 1956 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 that the detenu is a habitual offender and ultimately, branded him as Immoral Traffic Offender 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 averred to the effect that most of the averments made in the petition are false. Further, it is averred that the representation given on the side of the detenu has been duly considered and disposed of and altogether, it is prayed to dismiss the petition.

6. Learned counsel appearing for the petitioner has contended to the effect that a bail application has been filed in respect of Crime No.41/2017 and the same is available at page No.86 in the booklet, whereas in Tamil version of bail application, crime number has been erroneously mentioned as 87/2015. Further, no CrI.M.P. numbers have been furnished. However, the Detaining Authority has erroneously mentioned some CrI.M.P. numbers and therefore, the Detaining Authority has not applied his mind properly. Under the said circumstances, the Detention Order in question suffers from infirmity and the same is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor has contended that actually representation has not been given on the side of the detenu. But, erroneously it has been stated in the counter that representation has been given. Further, the Detaining Authority after considering all the materials supplied to him, has rightly invoked Act 14 of 1982 against the detenu and consequently, passed the Detention Order in question and therefore, the same is not liable to be quashed.

8. As rightly pointed out on the side of the petitioner, in the booklet at page No.86, bail application filed in Crime No.41/2017 is available and in page No.87, Tamil Version of bail application is available. But, crime number has been erroneously mentioned as 87/2015. Likewise, no Crl.M.P. numbers are available. Further, the Detaining Authority has erroneously mentioned some Crl.M.P. numbers in the Detention Order. Therefore, it is easily discernable to the effect that the Detaining Authority has not properly applied his mind in passing the Detention Order. Since, the Detaining Authority has not properly applied his mind, only read all the papers supplied to him, this Court is of the considered view that the Detention Order in question is liable to be quashed.

9. In fine, this petition is allowed. The Detention Order dated 03.04.2017 passed in No.113/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Narayanan, aged 32 years, S/o.Narasimma Rao, residing at No.36, 1st Street, Bakthavachalam Colony, Vadapalani, Chennai-26 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/

सत्यमेव जयते
Sub Asst. Registrar

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To

1.The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise [XVI] Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7.

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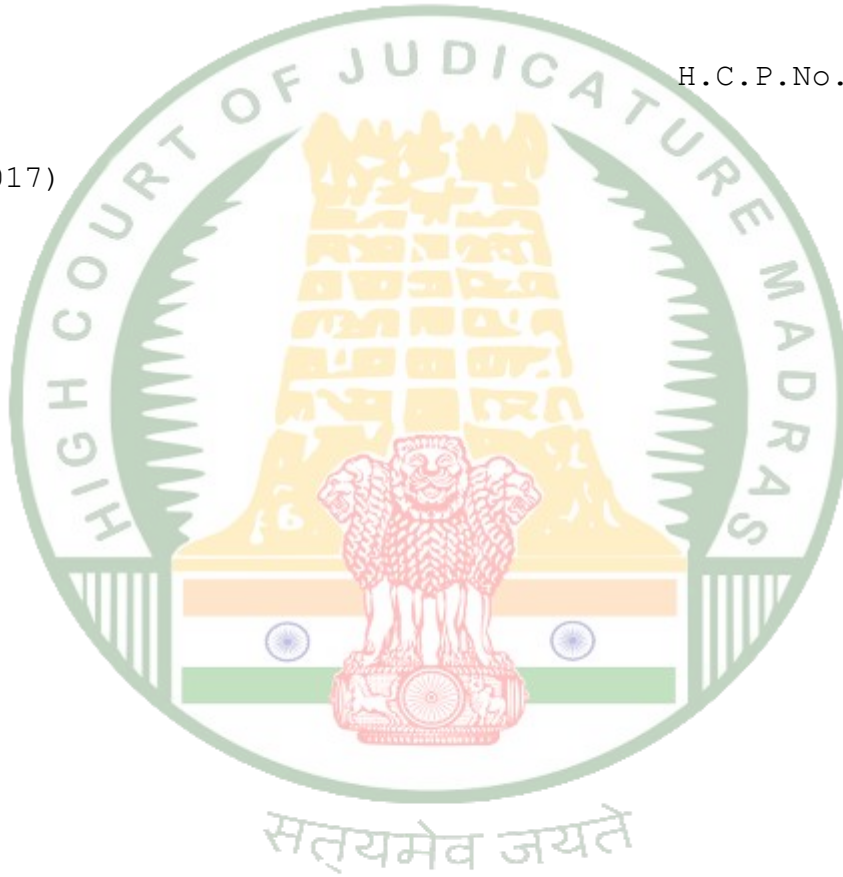
3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison,Puzhal,
Chennai.

5.The Joint Secretary to Government,
Public(Law & Order),
Fort St.George,Ch-9.

H.C.P.No.565 of 2017

kgk(co)
ss(12/7/2017)



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