

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.09.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE S.BASKARAN

H.C.P.No.574 of 2017

Mohamed Mujahith Abu Backar .. Petitioner/
Brother of the detenu

Vs

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

2.The Commissioner of Police,
Chennai Police,
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 leading to the detention of the petitioner's brother Umar @ Mohamed Umar, aged 34 years, S/o.Khan Basha, is presently lodged in Central Prison, Puzhal at Chennai and has been detained under Act 14/1982 as a Goonda vide detention order dated 03.04.2017 on the file of the 2nd respondent herein, made in Memo No.109/BCDFGISSSV/2017 and quash the same and consequently direct the respondents herein to produce the body and person of the detenu before this Hon'ble Court and thereafter set him at liberty.

For Petitioner : Mr.M.Rajavelu
For Respondents : Mr.V.M.R.Rajentren, APP

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 Memo

No.109/BCDFGISSSV/2017 dated 03.04.2017 by the Detaining Authority against the detenu by name, Umar @ Mohamed Umar, aged 34 years, S/o.Khan Basha, residing at No.12/57, F-1, Ponnamman Koil Street, Alandur, Chennai-16 and quash the same.

2. The Inspector of Police, S-5 Pallavaram 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. S-5 Pallavaram Police Station Crime No.2883/2016 registered under Sections 147, 363, 342, 323, 294[b], 384 and 506[ii] of the Indian Penal Code @ 147, 364A, 342, 323, 294[b], 384, 506[ii] and 202 of the Indian Penal Code.
- ii.S-13 Chrompet Police Station Crime No.77/2017 registered under Sections 147, 148, 302 of the Indian Penal Code @ 147, 148, 452, 302 r/w 120[b] and 34 of the Indian Penal Code.
- iii.S-5 Pallavaram Station Crime No.158/2017 registered under Sections 341, 294[b], 392 r/w 397, 336, 427 and 506[ii] of the Indian Penal Code.
- iv.S-6 Sankar Nagar Police Station Crime No.183/2017 registered under Sections 341, 294[b], 397 and 506[ii] of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 17.01.2017, one Arulraj, S/o.Mariya Siluvai, residing at No.27, Thulukanathamman Koil Street, Bharathi Nagar, Jameen Pallavaram, Chennai-43, as de facto complainant has given a complaint against the present detenu and others in S-5 Pallavaram Police Station, wherein, it is alleged that in the place of occurrence, by showing a knife, the detenu has illegally deterred the de facto complainant by using filthy words and also forcibly taken away a sum of Rs.980/- from the shirt pocket of the de facto complainant and at such circumstances, a case been registered in Crime No.219/2017 under Sections 341, 294[b], 392 r/w 397, 336, 427 and 506[ii] of the 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 a habitual offender and ultimately, branded him as goonda by 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.

5. In the counter filed on the side of the respondents, it is averred to the effect that most of the averments made in the petition are false. The Sponsoring Authority has supplied all the relevant 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, passed the impugned Detention Order and the same does not require any interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the petitioner, two representations are submitted, but, the same have not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. Learned Additional Public Prosecutor has contended that all the representations submitted on the side of the detenu are 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 is clearly stated that in respect of 1st representation, in between column Nos.7 to 9, 5 clear working days are available and in between column Nos.12 and 13, 29 clear working days are available. Likewise, in respect of 2nd representation, there is no mention about the date on which remarks called for and in between column Nos.12 and 13, 20 clear working days are available and no explanation has been given on the side of the respondents with regard to such delay and 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 petition is allowed. The Detention Order dated 03.04.2017 passed in Memo No.109/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Umar @ Mohamed Umar, aged 34 years, S/o.Khan Basha, 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

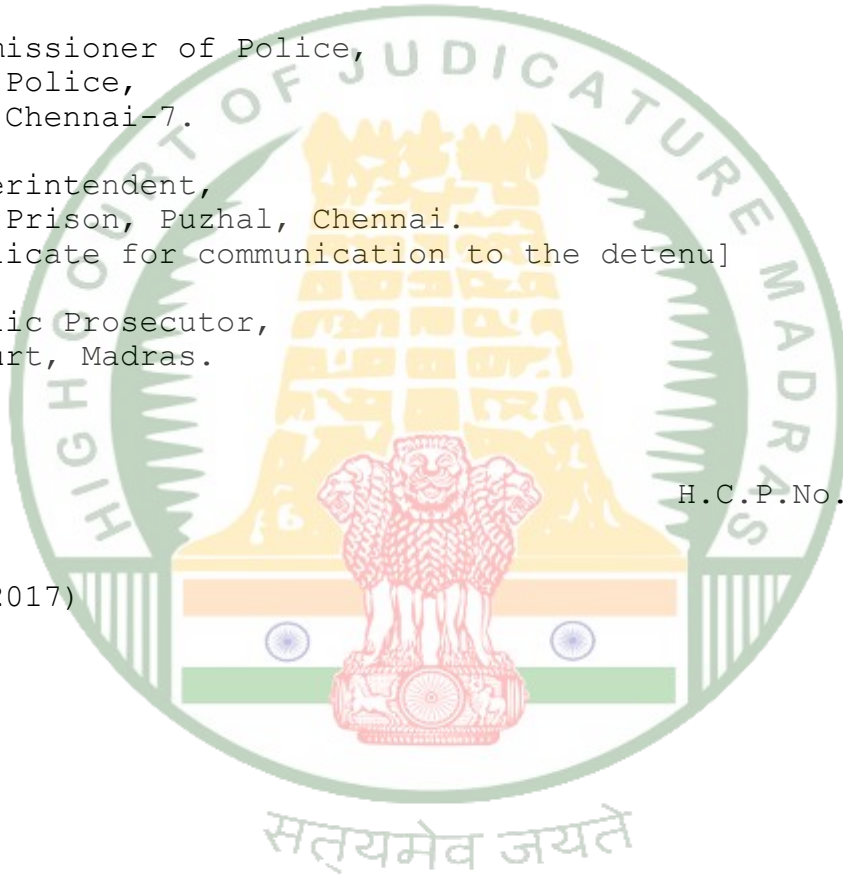
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To

- 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-9.
- 3.The Commissioner of Police,
Chennai Police,
Vepery, Chennai-7.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
[in duplicate for communication to the detenu]
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.574 of 2017

AR(V)
VR(11/09/2017)



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