

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.09.2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.583 of 2017

Kathiza Banu

.... Petitioner

vs.

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

2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records in connection with the order of detention passed by the second respondent dated 06.04.2017 in Memo No.132/BCDFGISSSV/2017, against the petitioner's husband Syed Mohammad Ali, son of Sheik Mansoor, aged about 54 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Parthiban

For Respondents : Mr.V.M.R.Rajentran, Addl.P.P.

ORDER

(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 detention order passed in BCDFGISSSV No.132/2017, dated 06.04.2017, by the detaining authority against the detenu, by name Syed Mohammad Ali @ Rafiq, aged 54, son of Sheik Mansoor, residing at No.3051, 4th Street, Z-Block, 13th Main Road, Anna Nagar West, Chennai-600 040 and quash the same.

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<https://hcservices.ecourts.gov.in/hcservices/> The Sub-Inspector of Police S-13, Chrompet 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 case.

- i. S-5 Pallavaram Police Station Cr.No.2883 of 2016, registered under Sections 147, 363, 342, 323, 294(b), 384, 506(ii) of the Indian Penal Code altered into Sections 147, 364-A, 342, 323, 294(b), 384, 506(ii) and 202 of the Indian Penal Code.

3. Further, it is averred in the affidavit that one Abdul Khadar, aged 64 years, son of Khaja Moideen, residing at No.38, Periya Palayathamman Koil Street, Pallavaram, Chennai-43, as defacto complainant, has given a complaint against the detenu and others, in S-13, Chrompet Police Station, wherein it is alleged to the effect that on the date of occurrence, in the place of occurrence, the present detenu and others have formed an unlawful assembly with deadly weapons and indiscriminately attacked the son of the defacto complainant and due to their overt acts, he passed away. Under such circumstances, a case has been registered in Crime No.77 of 2017, under Sections 147, 148 and 302 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 perusing the averments made in the affidavit and other connected documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as a 'Goonda' by way of passing the impugned detention order and in order to quash the same, the present petition has been filed by the wife 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 submitted all the relevant materials to the detaining authority. The detaining authority, after considering all the relevant materials and other connected documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as a 'goonda' by way of passing the impugned detention order and the same does not require any interference and therefore, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, a representation has been submitted, but the same has not been disposed of without delay and therefore, the detention order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondents has contended to the effect that the representation submitted on the side of the detenu has 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 is clearly stated that in between Column Nos.7 to 9, thirteen clear working days are available and in between Column Nos.12 and 13, twenty three 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.

In fine, this Habeas Corpus Petition is allowed. The detention order dated 06.04.2017, passed in BCDFGISSSV No.132/2017, by the detaining authority against the detenu, by name Syed Mohammad Ali @ Rafiq, aged 54 years, S/o Sheik Mansoor, residing at No.3051, 4th Street, Z-Block, 13th Main Road, Anna Nagar West, Chennai-600 040, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

msk
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, Greater Chennai, Vepery, Chennai-600 007
 4. The Superintendent, Central Prison, Puzhal, Chennai.
 5. The Public Prosecutor, High Court, Madras.
- +1 CC to Mr.V.Parthiban, advocate sr 67225.(15/09/2017)

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