

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2017

CORAM:

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

H.C.P.No.586 of 2017

Mrs.Radha

... 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 District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the entire records connected with the order of the 2nd respondent herein in B.C.D.F.G.I.S.S.V.No.20 of 2017, dated 16.03.2017, passed against the detenu namely Dhiraviyam, son of Kannappa Naicker, aged about 50 years, who is confined at Central Prison, Puzhal, and set aside the same and consequently, direct the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.T.R.Ravi

For Respondents : Mr.V.M.R.Rajentran,
Additional Public Prosecutor

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.20/2017, dated 16.03.2017, by the detaining authority against the detenu, by name Dhiraviyam, aged 50 years, S/o Kannappa Naicker, residing at 3, Vinayagarkoil Street, Acharavakkam Village, Thiruporurr Taluk, Kancheepuram District, and quash the same.

it is averred to the effect that the detenu has involved in the following adverse cases.

i. Prohibition Enforcement Wing, Mamallapuram Cr.No.431 of 2016, registered under Sections 4 (1)(aaa), 4(1-A)(ii), 14(A) and 11 of the Tamil Nadu Prohibition Act, 1937 read with 6 & 7 of the Tamil Nadu Rectified Spirit Rules, 1959.

ii. Prohibition Enforcement Wing, Mamallapuram Crime No.86 of 2017, registered under Sections 4(1)(aaa) of the Tamil Nadu Prohibition Act read with 6 & 11 of the Rectified Spirit Rules 2000.

3. Further, it is averred in the affidavit that on 20.02.2017, on the basis of reliable information, the Inspector of Police and other Police officials, attached to Prohibition Enforcement Wing, Mamallapuram, have made vehicle check up and they intercepted a Maruthi Van bearing registration No.PY-01-J-9002 and ultimately found that the detenu is in possession of rectified spirit without having licence and after observing due formalities, a case has been registered in Crime No.87 of 2017, under Sections 4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act read with 7 & 11 of Rectified Spirit Rules 2000 (Transporting) 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 'Bootlegger' 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. On the side of the respondents, a counter has been filed, wherein it is contended inter alia 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 'Bootlegger' 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, two clear working days are available and in between Column Nos.12 and 13, twenty two 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 16.03.2017, passed in BCDFGISSSV No.20/2017, by the detaining authority against the detenu, by name Dhiraviyam, aged 50 years, S/o Kannappa Naicker, residing at No.3, Vinayagarkoil Street, Acharavakkam Village, Thiruporur Taluk, Kancheepuram District, 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.

Sd/-
Assistant Registrar(CCC)

//True Copy//

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To

Sub Assistant Registrar

1. The Joint Secretary to Government of
Tamil Nadu,
Public (Law and Order) Department,
Secretariat, Chennai-9.
2. The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Secretary to Government,
Home, Prohibition & Excise Department,
Fort St.George, Chennai 09.
5. The Public Prosecutor,
High Court, Madras

+1cc to Mr.T.R.Ravi, Advocate, S.R.No.61512

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