

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.596 of 2017

Mohamed Mujahith Abu Backar .. Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George
Chennai- 600 009

2.The Commissioner of Police
Chennai Police
Veppery, Chennai-7 .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the entire records leading to the detention of the petitioner's friend Ashlam Basha, Son of Hayath Bazha, male, aged 38 years, who is presently lodged in Central Prison, Puzhal, Chennai and has been detained under Act 14/82 as a "Goonda"vide detention order dated 07.04.2017 on the file fo the 2nd respondent herein, made in Memo No.142/BCDFGISSV/2017 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from Central Prison, Puzhal, Chennai.

For Petitioner : Mr.M.Rajavelu

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 BCDFGISSSV No.142/2017 dated 07.04.2017 by the Detaining Authority against the detenu by name, Ashlam Basha, aged 38 years, S/o.Hayath Basha, residing at No.10, Vedharigi Street, Alandur, Chennai - 600 016 and quash the same.

2. The 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 one Abdul Khadar, aged 64 years, S/o.Khaja Moideen, residing at No.38, Periya Palayathamman Koil Street, Pallavaram, Chennai-43, as de facto complainant, has lodged a complaint wherein it is averred to the effect that on the date of occurrence, the detenu and others formed an unlawful assembly with deadly weapons and murdered his son. Further it is alleged in the complaint that on 18.12.2016, the detenu and others have abducted his brother by name Mohammed Ali and consequently, a case has been registered in Crime No.77 of 2017 under Sections 147, 148 and 302 of Indian Penal Code and ultimately requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

3. The Detaining Authority, after considering the averments made in the affidavit and other connected documents, has derived a subjective satisfaction to the effect that the detenu has committed a grave offence and ultimately branded him as "Goonda" by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the friend of the detenu as petitioner.

4. On the side of the respondents, counter has not been filed and therefore, the present Habeas Corpus Petition is disposed of on merits on the basis of available materials on record.

5. 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.

6. Learned Additional Public Prosecutor 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 put forth on the side of the petitioner is liable to be rejected.

7. On the side of the respondents, a proforma has been submitted, wherein it has been clearly stated that in between column Nos.7 and 9, 11 clear working days are available and in between column Nos.12 and 13, 24 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.

8. In fine, this petition is allowed. The Detention Order dated 07.04.2017 passed in BCDFGISSSV No.142/2017 by the Detaining Authority against the detenu by name, Ashlam Basha, aged 38 years, S/o.Hayath Basha is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.

2. Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George
Chennai- 600 009

3.The Commissioner of Police
Chennai Police
Veppery, Chennai-7

4.The Superintendent,
Central Prison, Puzhal, Chennai
[in duplicate for communication to the detenu]

5.The Public Prosecutor,
High Court, Madras.

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