

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.08.2017

CORAM

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

H.C.P.No.652 of 2017

Sunder

.. Petitioner

Vs

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

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

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records connected with the detention order of the 2nd respondent herein in Memo No.93/BCDFGISSSV/2017 dated 30.03.2017 against the detenu, namely Munusamy, aged 49 years, S/o.Elumalai, who is confined at Central Prison, Puzhal, Chennai, set aside the same and consequently direct the respondents to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : M/s.D.Gopikrishnan

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 Memo BCDFGISSSV No.93/2017 dated 30.03.2017 by the Detaining Authority against the detenu by name, Munusamy, aged 49 years, S/o.Elumalai, No.8/19, Housing Board, Periyar Nagar, Thiruvannamipur, Chennai -600 041 and quash the same.

2. The Inspector of Police, Thiruvanniyur 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:

1. J-6 Thiruvanniyur Police Station, Crime No.2639 of 2016, registered under Sections 147, 148, 341, 294(b), 323, 307 and 506(ii) of Indian Penal Code;
2. J-6 Thiruvanniyur Police Station, Crime No.2647 of 2016, registered under Sections 147, 148, 341, 294(b), 323, 392 r/w.336, 427, 397 and 506(ii) of Indian Penal Code;
3. J-6 Thiruvanniyur Police Station, Crime No.3264 of 2016, registered under Sections 147, 148, 341, 324, 307 and 506(ii) of Indian Penal Code; and
4. J-6 Thiruvanniyur Police Station, Crime No.3346 of 2016, registered under Sections 8(c) r/w. 20(b)(ii)(C) of NDPS Act.

3. Further it is averred in the affidavit that one S.Christin Jayasil, Inspector of Police, attached to Thiruvanniyur Police on 02.02.2017 at about 12 Noon, has given an information to the effect that ganja is being sold. Under such circumstances, the Inspector of Police and others have rushed to the place of occurrence and found that the detenu and his wife is in possession of ganja without having licence and after observing due formalities, a case has been registered in Crime No.415 of 2017 under Sections 8(C) r/w. 20(b)(ii)(B) of NDPS Act 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 derived a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as "Drug Offender" by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the foster son of the detenu, as petitioner.

5. In the counter filed on the side of the respondents it has been contended to the effect that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the material records to the Detaining Authority. The Detaining Authority, after perusing the material records and other connected papers, has derived a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as "Drug Offender" by way of passing the impugned Detention Order and the same does not call for 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 detenu, a representation has been submitted and the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. Per contra, 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 under said circumstances, the contention put forth 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 has been clearly stated that in between column Nos.7 and 9, 8 clear working days are available and in between column Nos.12 and 13, 23 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 30.03.2017 passed in BCDFGISSSV No.93/2017 by the Detaining Authority against the detenu by name, Munusamy, aged 49 years, S/o.Elumalai, No.8/19, Housing Board, Periyar Nagar, Thiruvannamiyur, Chennai -600 041, 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 II)

/true copy/

Sub Asst. Registrar

gpa

To

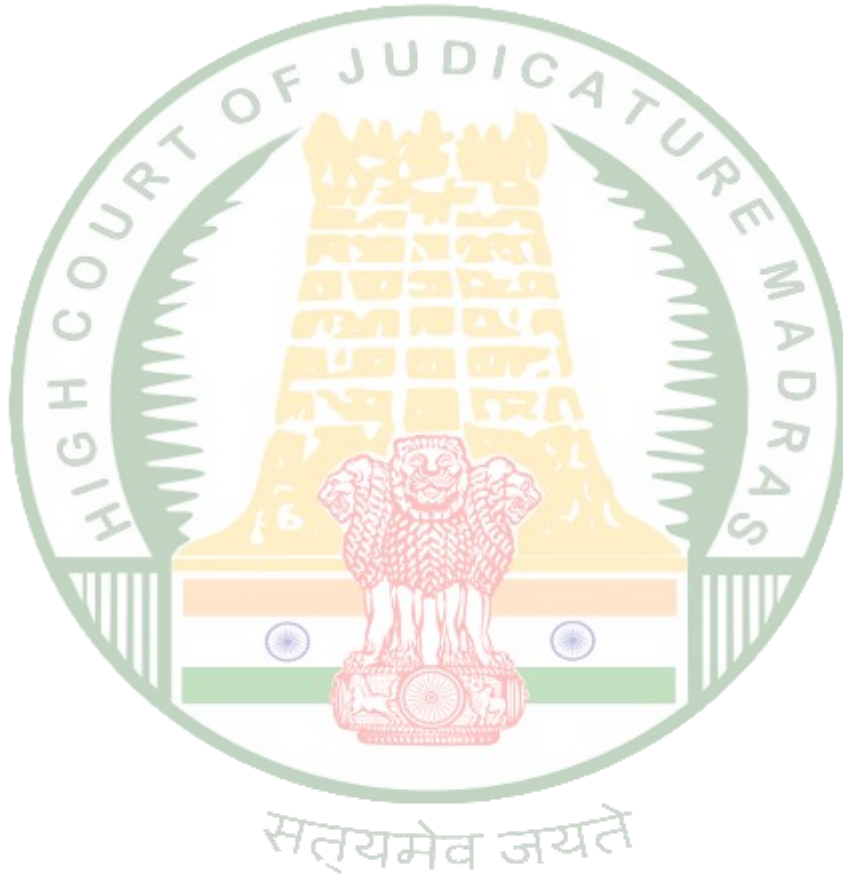
1. The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
2. The Secretary to Government,
Prohibition and Excise Department,
Secretariat, Fort St. George
Chennai-9.
3. The Commissioner of Police
The Commissioner Office
Vepery, Chennai - 600 007

4. The Superintendent
Central Prison, Puzhal

5. The Public Prosecutor,
High Court, Madras.

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VSN(CO)
NR 30/08/2017



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