

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.09.2017

CORAM:

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

H.C.P.No.659 of 2017

Vasanthi

.... 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 Police,
Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 11.04.2017, in Memo No.157/BCDFGISSSV/2017, against the petitioner's sister's son Bose, son of Thangvel, aged about 36 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.Paarthiban

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 Memo No BCDFGISSSV.157/2017, dated 11.04.2017, by the detaining authority against the detenu, by name Bose, aged 36 years, son of Thangavel, No.1/185, Melaalankarathattu, Arokiyapuram, Tuticorin District 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 on 12.01.2017, 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 in Chrompet Police Station, wherein it is alleged to the effect that on the date of occurrence at about 12.00 noon, while the defacto complainant and his son were in a shop, the present detenu and others have formed an unlawful assembly with deadly weapons and indiscriminately attacked his son. Due to their overt act, he passed away. Further it is averred in the complaint that on 18.12.2016, one Rafiq, has abducted his brother Mohammad Ali. Under the said 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.

3.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 has committed a grave offence 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 maternal uncle of the detenu, as petitioner.

4.Even though this petition has been posted today finally for filing counter, on the side of the respondents, counter has not been filed and therefore, the present petition is disposed of on merits, on the basis of available materials on record.

5.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.

6.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, with regard to disposing of representation, is totally irrelevant and the same is liable to be ignored.

7.On the side of the respondents, a proforma has been submitted, wherein it is clearly stated that in between Column Nos.7 and 9, nine clear working days are available and in between Column Nos.12 and 13, twenty four 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 11.04.2017, passed in BCDFGISSSV No.157/2017, by the detaining authority against the detenu, by name Bose, aged 36 years, S/o Thangavel, residing at No.1/185,

Melaalankarathattu, Arokiyapuram, Tuticorin 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(CS VIII)

//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 Police,
Office of Commissioner of Police(Goondas Section)
Vepery, Chennai-600 007
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.(In duplicate)
- 5.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते

H.C.P.No.659 of 2017

GN(04/09/2017)

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