

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2017

CORAM

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

H.C.P.No.673 of 2017

M.Annamalai

.. Petitioner

Vs

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

2.The District Magistrate and District Collector
T.V.Malai District
T.V.Malai

.. 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 D.O.No.17/2017-C-2 passed by the second respondent on 17.04.2017 set aside the same and direct the respondents to produce the detainee Saraswathi, wife of Late Sankar, aged 35 years, who is now detained in Special Prison for Women, Vellore-9 before this Court and set her at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

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 the records relating to the detention order passed in D.O.No.17/2017-C2 dated 17.04.2017, against the detainee by name, Saraswathi, aged 35 years, w/o.(late) Sankar, Selvapuram H/o, Vada Andapattu Village, Tiruvannamalai Taluk and District and quash the same.

2. The Inspector of Police, Tiruvannamalai, Prohibition Enforcement Wing, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detainee has involved in the following adverse cases:

i) Tiruvannamalai, Prohibition Enforcement Wing, Crime No.456 of 2016, registered under Sections 4(1) (aa), 4(1-A)(ii) of TNP Act, 1937, altered to Section 4(1)(aa) of TNP Act, 1937; and

ii) Tiruvannamalai, Prohibition Enforcement Wing, Crime No.894 of 2016, registered under Sections 4(1) (aa), 4(1-A)(ii) of TNP Act, 1937, altered to Section 4(1)(aa) of TNP Act, 1937;

3. Further, it is averred in the petition that on 03.04.2017, one Subramani, S/o.Kumar, Mariyamman Koil Street, Poomathakulam, Tiruvannamalai Town, Taluk and District, has given a oral complaint. On the basis of the oral complaint, the police party has seen the detainee while selling arrack and after observing due formalities, they registered a case in Crime No.201 of 2017 under Sections 4(1) (i) r/w.4(1-A)(ii) of Tamil Nadu Prohibition Act, 1937 and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detainee.

4. The Detaining Authority, after considering the averments made in the affidavit and other connected materials, has derived a subjective satisfaction to the effect that the detainee is a habitual offender and ultimately, branded her as "Bootlegger" by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the cousin brother of the detainee, as petitioner.

5. In the counter filed on the side of the respondents, it is averred that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the relevant materials to the Detaining Authority and the Detaining Authority, after considering the materials supplied to him and other connected materials, has derived a subjective satisfaction to the effect that the detainee is habitual offender and further the representation given on the side of the detenu has been duly disposed of without delay and under such circumstances, the impugned detention order does not require any interference and therefore, the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has raised the following points:-

i) After receipt of Detention Order, a representation has been submitted to the Detaining Authority viz., the second respondent herein, but the same has not been disposed of without delay; and

ii) In the second ground case, it has been specifically

stated that from the place of occurrence, the detenie has absconded and further it is stated that on the same day she has been remanded to custody.

7. The learned Additional Public Prosecutor has contended that on the side of the detenie, no representation has been submitted and under the said circumstance, the first point urged on the side of the petitioner is liable to be rejected and with regard to second point urged on the side of the petitioner, the Detaining Authority has rightly observed the arrest and remand of the detenie and therefore, the present petition deserves to be dismissed.

8. In the counter filed on the side of the respondents, at Paragraph No.17, it has been specifically averred to the effect that after receipt of Detention Order, the detenie has sent a representation to the Detaining Authority, viz., the second respondent herein and the same has been disposed of by the first respondent without delay.

9. Considering the fact that in Paragraph No.17 of the counter filed on the side of the respondents, it is specifically stated to the effect that the Detaining Authority has received the representation submitted on the side of the detenie and also considering the fact that after submitting remarks, the first respondent has duly disposed of the representation without delay, it is needless to say that the first contention urged on the side of the petitioner is liable to be accepted. Further on the side of the respondents, no proforma has been submitted for the purpose of knowing that the representation in question has been duly disposed of by the first respondent after getting proper remarks from the second respondent.

10. The second contention put forth on the side of the petitioner is that in respect of second adverse case it is has been specifically stated that the detenie has absconded from the place of occurrence and subsequently it is stated that she has been remanded to custody. In fact, the second adverse case is totally bereft of particulars with regard to date and time of arrest of the detenie. Under such circumstance, the Court can easily come to a conclusion that the Detaining Authority has not applied his mind properly. Considering the overall circumstances mentioned supra, this Court is of the view that the Detention Order in question is liable to be quashed.

11. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 17.04.2017 passed in Detention Order No. D.O.No.17/2017-C-2 by the second respondent against the detenie by name, Saraswathi, aged 35 years, w/o.(late) Sankar, Selvapuram H/o, Vada Andapattu Village, Tiruvannamalai Taluk and

District is quashed and directed to set her at liberty forthwith unless she is required to be incarcerated in any other case.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gpa

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai - 600 009
2. The District Magistrate and District Collector
T.V.Malai District
T.V.Malai
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Special Prison for women
Vellore.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort st.George, Chennai-9

H.C.P.No.673 of 2017

RJ(CO)
NR 25/07/2017

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