IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.09.2017

CORAM:

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

H.C.P.No.687 of 2017

Bakyalakshmi .... Petitioner

vs.

1.The Government of Tamil Nadu,
rep.by the Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector
and District Magistrate,
Kancheepuram,
Kancheepuram District ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records relating to the proceedings of the 2nd respondent in B.C.D.F.G.I.S.S.S.V.No.30 of 2017, dated 19.04.2017, against the detenu Sugumar, son of Chandiran, aged about 33 years and quash the same and consequently direct the respondents herein to produce the detenu, who is detained under the Tamil Nadu Act 14 of 1982 currently confined in the Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel for
Mr.P.Anbazhagan

For Respondents: Mr.V.M.R.Rajentran, Addl.P.P.

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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 B.C.D.F.G.I.S.S.S.V.No.30/2017, dated 19.04.2017, by the detaining authority against the detenu, by name Sugumar, aged 33 years, S/o Chandran, residing at 29/32, V.P.Singh Nagar, Big Natham, Chengalpattu & Taluk, Kancheepuram District and quash the same.

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2. The Inspector of Police, Chengalpattu Town 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.

i. Chengalpattu Town Police Station, Cr.No.704 of 2016, registered under Sections 21(i) of the Mines and Minerals Act.

ii. Chengalpattu Taluk Police Station, Cr.No.154 of 2017, registered under Sections 21(i) of the Mines and Minerals Act.

3. Further, it is averred in the affidavit that on 03.04.2017, the Sub-Inspector of Police, attached to Chengalpattu Town Police Station and other Police Constables have raided the lorries and at that time, they noticed a numberless lorry and subsequently intercepted and found that the present detenu has smuggled sand without any licence and after observing due formalities, a case has been been registered in Crime No.247 of 2017, under Sections 294(b), 353, 307, 506(ii), 430, 379 of the Indian Penal Code and 3(i) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 read with Section 21(i) of the Mines and Minerals Act 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 'Sand Offender' 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.In the counter filed on the side of the respondents it is averred 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 'Sand Offender' 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, three representations are submitted and the same have 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 that the representations submitted on the side of the detenu have already been disposed of without delay and therefore, the contention urged on the side of the petitioner, is liable to be rejected.

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8. On the side of the respondents, a proforma has been submitted, wherein it is clearly stated that in respect of the first representation, in between Column Nos.7 to 9, two clear working days are available and in between Column Nos.12 and 13, thirty clear working days are available; likewise in respect of the second representation, in between Column Nos.7 to 9, two clear working days are available and in between Column Nos.12 and 13, nine clear working days are available and in respect of the third representation, in between Column Nos.7 to 9, two clear working days are available and in between Column Nos.12 and 13, nine 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 19.04.2017, passed in B.C.D.F.G.I.S.S.S.V.No.30/2017, by the detaining authority against the detenu, by name Sugumar, aged 33 years, S/o Chandran, residing at No.29/32, V.P.Singh Nagar, Big Natham, Chengalpattu & 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(CS II)

//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 District Collector
and District Magistrate,
Kancheepuram, Kancheepuram District
4.The Superintendent,
Central Prison,Puzhal, Chennai.
5.The Public Prosecutor,
High Court, Madras

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