IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2017

CORAM

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

H.C.P.No.694 of 2017

Tmt.Vasantha ... Petitioner

Vs

1. The Commissioner of Police
   Office of the Commissioner of Police
   Egmore, Chennai

2. The Principal Secretary
   Government of Tamil Nadu
   Home, Prohibition and Excise Department
   Chief Secretariat
   Fort St.George
   Chennai - 600 009

3. The Superintendent
   Special Prison for Women
   Puzhal, 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 pertaining ot the order of detention passed by the first respondent herein and made in No.176/BCDFGISSSV/2017 dated 15.04.2017 and to set aside the same and direct the third respondent to produce the body of the detenue Tmt.Devi, W/o.Pushparaj, aged 46 years, now confined in Special Prison for Women, Puzhal, Chennai before this Court and set her at liberty.

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For Petitioner : Mr.T.S.Srinivasan

For Respondents : Mr..V.M.R.Rajentren
Additional Public Prosecutor

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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 BCDFGISSSV No.176/2017 dated 15.04.2017, against the detenue by name, Devi, aged 46, W/o.Pushparaj, residing at No.20, Kailasapuram I Street, West Tambaram, Chennai-600 045 and quash the same.

2. The Inspector of Police, S-11 Tambaram Police Station, has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detenue has involved in the following adverse cases:

i) S-11 Tambaram Police Station, Crime No.2708 of 2016, registered under Sections 8(C) r/w.20(b)(ii)(B) of NDPS Act;

ii) S-11 Tambaram Police Station, Crime No.2735 of 2016, registered under Sections 8(C) r/w.20(b)(ii)(B) of NDPS Act; and

iii) S-11 Tambaram Police Station, Crime No.123 of 2017, registered under Sections 8(C) r/w.20(b)(ii)(B) of NDPS Act;

3. Further, it is averred in the petition that on 01.04.2017, on the basis of information received by the Sub-Inspector of Police and others, they watched sellers of ganja and in the place of occurrence, they found that the detenue is in possession of ganja without having any licence or authority and after due formalities, a case has been registered in Crime No.626 of 2017 under Section 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 detenue.

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 detenue is a habitual offender and ultimately, branded her 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 mother of the detenue, as petitioner.

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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 relevant materials and other connected papers, has derived a subjective satisfaction to the effect that the detenue is a habitual offender and rightly branded her as "Drug Offender" by way of passing the impugned

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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 detenue, a representation has been given, but the same has 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 has contended that the representation submitted on the side of the detenue has been duly disposed of without delay and therefore, 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 huge delay and that the same would affect the rights of the detenue 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 Habeas Corpus Petition is allowed and the Detention Order dated 15.04.2017 passed in BCDFGISSSV No.176 of 2017 by the first respondent against the detenue by name, Devi, aged 46, W/o.Pushparaj, residing at No.20, Kailasapuram I Street, West Tambaram, Chennai-600 045 is quashed and directed to set her at liberty forthwith unless she is required to be incarcerated in any other case.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gpa

To

1. The Commissioner of Police
   Office of the Commissioner of Police
   Egmore, Chennai.

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2. The Principal Secretary
   Government of Tamil Nadu
   Home, Prohibition and Excise Department
   Chief Secretariat
   Fort St.George
   Chennai - 600 009.

3. The Joint Secretary to Government,
   Public (Law & Order)
   Fort St.George, Chennai-9.

4. The Superintendent
   Special Prison for Women
   Puzhal, Chennai

5. The Public Prosecutor,
   High Court, Madras.

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