

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.09.2017

CORAM

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

H.C.P.No.698 of 2017

Durga

.. Petitioner

Vs

1. The Principal Secretary to Government
Home, Prohibition and Excise Dept.
Secretariat
Madras - 9

2. The Commissioner of Police
Greater Chennai
Veppery, Chennai - 600 007

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, directing the respondents to call for the records in connection with the order of detention passed by the second respondent dated 11.04.2017 in Memo No.160/BCDFGISSSV/2017, against the petitioner's brother Rajesh Son of Shanmugam, aged about 26 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.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 records relating to the Detention Order passed in BCDFGISSSV No.160/2017 dated 11.04.2017 by the Detaining Authority against the detenu by name, Rajesh, aged 26 years, S/o.Shanmugam (Late), residing

at No.134, 1st Block, M.S.Muthu Nagar, Kannigapuram, Vyasarpadi, Chennai - 600 012 and quash the same.

2. The Inspector of Police, R1 Mambalam 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) R1 Mambalam Police Station, Crime No.504 of 2017, registered under Sections 341, 294(b), 384 & 506(i) of Indian Penal Code;

ii) R1 Mambalam Police Station, Crime No.508 of 2017, registered under Sections 341, 294(b), 427, 397 & 506(ii) of Indian Penal Code; and

iii) R1 Mambalam Police Station, Crime No.511 of 2017, registered under Sections 341, 294(b), 392 & 506(ii) of Indian Penal Code;

3. Further it is averred in the affidavit that one Ashok, aged 47 years, Son of Tekkaji, residing at No.102, Lalithapuram, Bhind Vembuli Amman Temple, T.Nagar, Chennai -17, as defacto complainant, has given a complaint wherein it is alleged that in the place of occurrence, the present detenu and others have attacked the defacto complainant by using deadly weapons and thereby caused injuries. Under the said circumstances, a case has been registered in Crime No.517 of 2017, under Section 341, 294(b), 336, 427, 307 and 506(ii) of Indian Penal Code 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 a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him as "Goonda" by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the sister of the detenu, as petitioner.

5. On the side of the respondents, counter has not been filed. Under such circumstances, the present Habeas Corpus Petition is disposed of on merits on the basis of available materials on record.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, two representations are submitted, but 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 has contended that all the representations submitted on the side of the detenu are duly disposed of without delay and therefore, the contention put forth on the side of the detenu is liable to be rejected.

8. On the side of the respondents, a proforma has been submitted, wherein, it is clearly stated that in respect of first representation, in between column Nos.7 and 9, 4 clear working days are available and in between column Nos.12 and 13, 22 clear working days are available. Likewise in respect of second representation, in between column Nos.7 and 9, 5 clear working days are available and in between column Nos.12 and 13, 9 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 11.04.2017 passed in BCDFGISSSV No.160/2017 by the Detaining Authority against the detenu by name, Rajesh, aged 26 years, S/o.Shanmugam (Late), 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 III)

/true copy/

Sub Asst. Registrar

सत्यमेव जयते

gpa

To

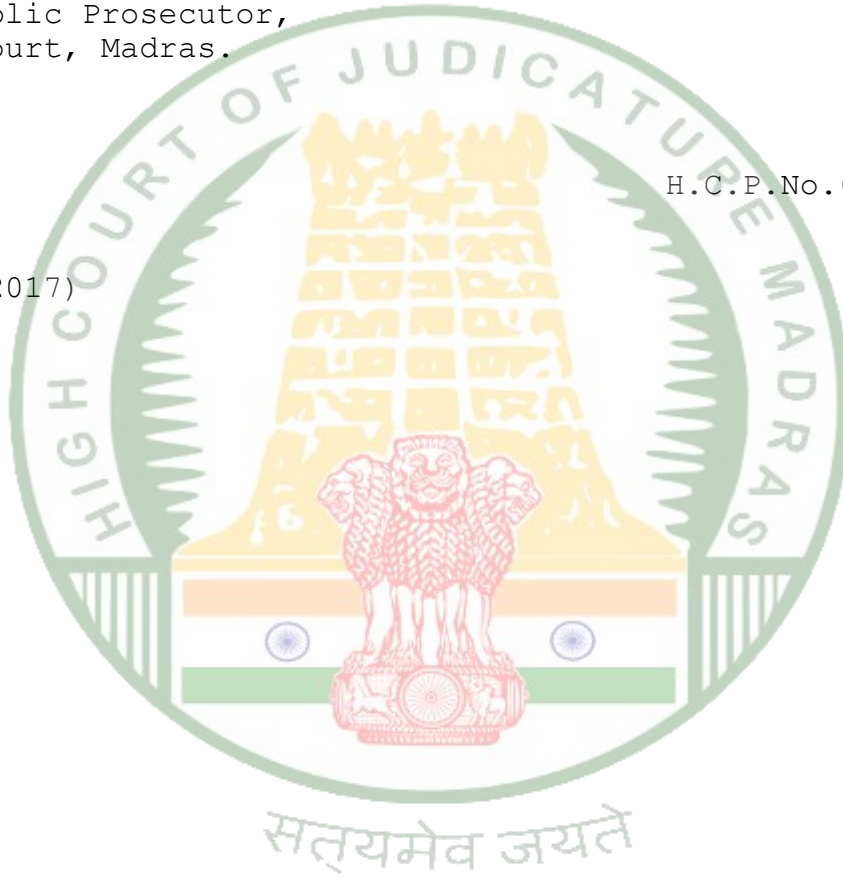
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1. The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.

2. The Principal Secretary to Government
Home, Prohibition and Excise Dept.
Secretariat
Madras - 9
3. The Commissioner of Police
Greater Chennai
Veppery, Chennai - 600 007
4. The Superintendent
Central Prison, Puzhal
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.698 of 2017

SCD(CO)
VR(12/09/2017)



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