

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2017

CORAM

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

H.C.P.No.704 of 2017

D.Arasu Kumar

.. Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

2.The Commissioner of Police,
Chennai City.

... 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 2nd respondent dated 05.04.2017 in Memo No.126/BCDFGISSSV/2017 against the petitioner/Arasu Kumar, S/o.Dhamodharan, Male, aged 43 years, who is confined at Central Prison, Puzhal-II, Chennai and set aside the same.

For Petitioner : Mr.S.Arivazhagan

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

सत्यमेव जयते

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 No.126/BCDFGISSSV/2017 dated 05.04.2017 by the Detaining Authority against the detenu by name, Arasu Kumar, aged 43 years, S/o.Dhamodharan and quash the same.

2. The Inspector of Police, Crime Branch, Chennai 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. F-1 Chintadripet Police Station Crime No.1028/2010 registered under Sections 341, 294[b] and 506[i] of Indian Penal Code.
- ii. Central Crime Branch Crime No.159/2015 registered under Sections 406, 420 and 506[i] of Indian Penal Code.

3. Further, it is averred in the petition that on 29.06.2015, one Thendral Mani, S/o.Chinnasami as de facto complainant has given a complaint against the detenu, wherein it is alleged that under the guise of getting M.B.B.S. seat to his daughter, the detenu has received a sum of Rs.30,00,000/- and subsequently, deceived him and the same has been registered in Crime No.475/2015 under Sections 406, 420, 506[i] r/w 34 of Indian Penal Code and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

4. The Detaining Authority after considering the averments made in the affidavit and other connected documents, has arrived at a subjective satisfaction that the detenu is a habitual offender and ultimately, branded him as goonda by passing the impugned Detention Order and in order to quash the same, the detenu himself filed the present petition as petitioner.

5. On the side of the respondents, counter has been filed, wherein, it has been averred to the effect that most of the averments made in the petition are false and in fact, the Sponsoring Authority has supplied all the materials to the Detaining Authority. The Detaining Authority after considering all the materials placed before him, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and the same does not require any interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, a representation has been given to the concerned authorities. But, the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. Learned Additional Public Prosecutor has contended that the representation alleged to have been given on the side of the petitioner has been duly disposed of without delay and therefore, the contention urged 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, 5 clear working days are available. Likewise,

in between column Nos.12 and 13, 20 clear working days are available and no explanation has been given on the side of the respondents with regard to such a huge 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 05.04.2017 passed in No.126/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Arasu Kumar, aged 43 years, S/o.Dhamodharan is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The Commissioner of Police,
Chennai City.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Central Prison,
Puzhal Chennai.
- 5.The Joint Secretary to Government,
Public Law and Order,
Fort St.George, Chennai-9.

+1cc to Mr.S.Arivazhagan, Advocate SR.No.48853

H.C.P.No.704 of 2017

VSN(CO)
GN(13/07/2017)