

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.09.2017

CORAM

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

H.C.P.No.716 of 2017

Salema

.. Petitioner

Vs

1.The Government of Tamil Nadu
Rep. by its Secretary
Home, Prohibition and Excise (XVI) Department
Fort St. George, Chennai-600 009.

2.The Commissioner of Police,
Greater Chennai
Office of Commissioner of Police
Veppery, Chennai

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, calling for the records in detention order Memo No.171/BCDFGISSSV/2017 dated 13.04.2017, on the file of the 2nd respondent and quash the same and direct the respondents herein to produce the petitioner's son Dawood Basha, aged about 38 years, the detenu now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.K.Kannan

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 records relating to the detention order passed in BCDFGISSSV No.171/2017 dated 13.04.2017 by the Detaining Authority against the detenu by name, Dawood Basha, aged 38 years, S/o.Ghouse Basha, Hut, 3rd Street, Venkatapuram, Little Mount, Saidapet, Chennai - 600 015 and quash the same.

2. The Inspector of Police, R-6 Kumaran Nagar 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) J-1 Saidapet Police Station, Crime No.475 of 2016, registered under Sections 457 and 380 of Indian Penal Code;

ii) R-6 Kumaran Nagar Police Station, Crime No.496 of 2016, registered under Section 379 of Indian Penal Code; and

iii) R-6 Kumaran Nagar Police Station, Crime No.838 of 2017, registered under Section 380 of Indian Penal Code.

3. Further it is averred in the affidavit that on 23.02.2017, one Prakash, aged 34 years, S/o.Sivashanmugam, residing at No.19/16, Karunanidhi Street, West Mambalam, Chennai-33, as defacto complainant, has given a complaint in Kumaran Nagar Police Station wherein it is alleged to the effect that in the place of occurrence by showing a knife, the detenu has forcibly taken away a sum of Rs.960/- and a cellphone from the custody of the defacto complainant and also threatened him. Under such circumstances, a case has been registered in Crime No.845 of 2017 under Sections 341, 336, 294(b), 397, 427 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 materials, 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 mother of the detenu, as petitioner.

5. On the side of the respondents, counter has not been filed. Under such circumstance, this 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. Learned Additional Public Prosecutor has contended that the representations submitted on the side of the detenu are 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 is clearly stated that in respect of

first representation, in between column Nos.7 to 9, 6 clear working days are available and in between column Nos.12 and 13, 24 clear working days are available. Likewise, in respect of second representation, in between column Nos.7 to 9, 4 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 13.04.2017 passed in BCDFGISSSV No.171/2017 by the Detaining Authority against the detenu by name, Dawood Basha, aged 38 years, S/o.Ghouse Basha 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 V)

/true copy/

Sub Asst. Registrar

gpa

To

1. The Secretary to the Government
Home, Prohibition and Excise (XVI) Department
Secretariat
Chennai- 600 009
2. The Commissioner of Police,
Greater Chennai
Office of Commissioner of Police
Veppery, Chennai
3. The Superintendent
Central Prison
Puzhal, Chennai
4. The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

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NR 11/09/2017