

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.09.2017

CORAM

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

H.C.P.No.721 of 2017

G.Mari

.. Petitioner

Vs

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

2.The Commissioner of Police,
Chennai Police,
O/o.The Commissioner of Police [Goondas Section],
Egmore, 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 relating to the detention order in No.190/BCDFGISSSV/2017 dated 17.04.2017 passed by the 2nd respondent under the Tamil Nadu Act 14/1982 and set aside the same and direct the respondents to produce the petitioner's son Vijay @ Vijayaprakash, aged 23 years, S/o.Mari, the detenu, now confined in Central Prison, Puzhal, Chennai, before this Hon'ble Court and set the detenu herein at liberty.

For Petitioner : Mr.J.Senthamil Arasu

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 No.190/BCDFGISSSV/2017 dated 17.04.2017 by the Detaining Authority against the detenu by name, Vijay @ Vijayaprakash, aged 23 years, S/o.Mari, residing at No.2/248, Periya Street, Vilangadupakkam, Redhills, Chennai-52 and quash the same.

2. The Inspector of Police, M-4 Red Hills 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 case :

i. M-4 Red Hills Police Station Crime No.172/2012 registered under Section 302 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 23.02.2017, one Sundaramoorthy, aged 49 years, S/o.Balan, residing at No.1/13, TVS Main Road, Kamarajar Nagar, Red Hills, Chennai-52, as de facto complainant has given a complaint against the present detenu and another, wherein, it is alleged to the effect that in the place of occurrence, the present detenu and another have unlawfully detained the de facto complainant and by showing deadly weapons, they forcibly taken away a sum of Rs.1,050/- from the pocket of the de facto complainant and also threatened him. Under such circumstances, a case has been registered in Crime No.439/2017 under Sections 341, 294[b], 336, 427, 392, 397 and 506[ii] of the 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 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 father of the detenu as petitioner.

5. On the side of the respondents, counter has been filed, wherein, it is clearly stated 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 perusing all the materials, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, passed the impugned Detention Order and the same does not call for 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 submitted, 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 submitted on the side of the detenu has been

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 between column Nos.7 to 9, 6 clear working days are available and in between column Nos.12 and 13, 5 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 17.04.2017 passed in No.190/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Vijay @ Vijayaprakash, aged 23 years, S/o.Mari, 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

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To

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

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

3.The Commissioner of Police,
Chennai Police,
O/o.The Commissioner of Police [Goondas Section],
Egmore, Chennai.

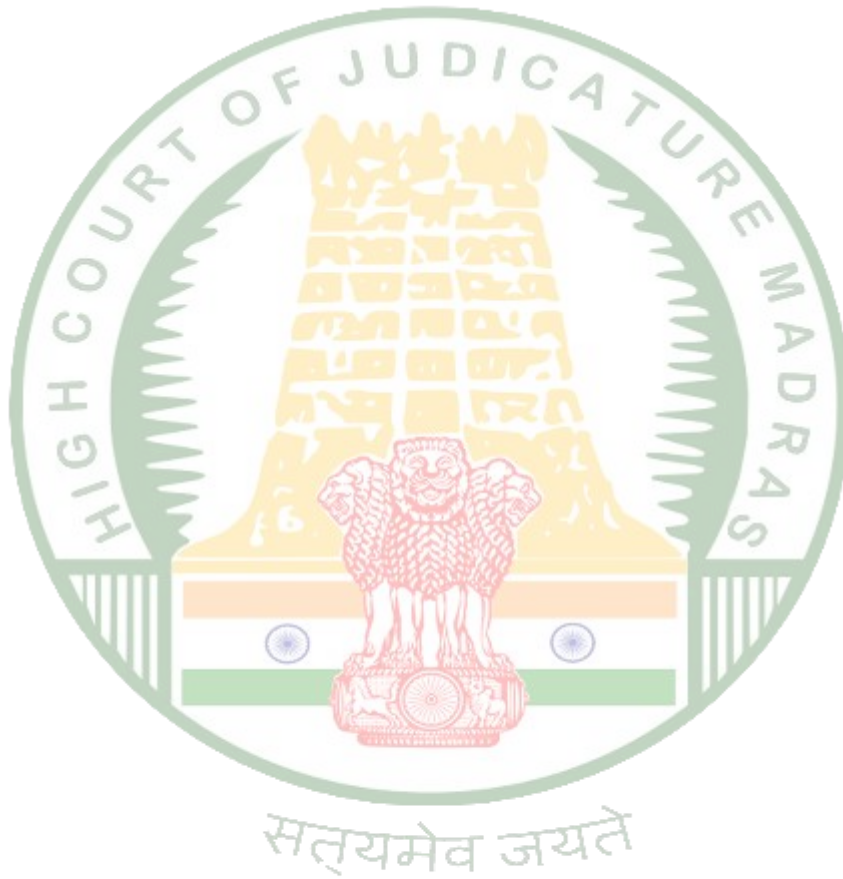
4.The Superintendent,
Central Prison, Puzhal, Chennai.
[in duplicate for communication to the detenu]

5.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.J.Senthamil Arasu, Advocate in sr.no.67677

H.C.P.No.721 of 2017

NR 18/09/2017



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