

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.07.2017

CORAM

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

H.C.P.No.739 of 2017

Elumalai
S/o.Nainiyappan

... Petitioner

Vs

1. The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat
Chennai - 600 009

2. The District Magistrate and
District Collector
Thiruvallur District
Thiruvallur

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for records in connection with the order of detention passed by the second respondent dated 25.04.2017 in BCDFGISSSV No.16/2017 against the detenu Elumalai, aged 35 years, S/o.Nainiyappan, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr. S.Senthilvel

For Respondents : Mr.V.M.R.Rajentran
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 the records relating to the detention order passed in BCDFGISSSV No.16/2017

dated 25.04.2017, against the detenu by name, Elumalai, aged 35 years, S/o.Nainiyappan, residing at No.263, Bramanar Street, Punnapakkam Village, Uthukottai Taluk, Tiruvallur District and quash the same.

2. The Inspector of Police, Vengal Police Station, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is averred that the detenu has involved in the following adverse case:-

1. Vengal Police Station, Crime No.199 of 2014, registered under Sections 36(A) of TNMMDR Act;
2. Vengal Police Station, Crime No.254 of 2015, registered under Sections 379, 430, 353, 307 r/w.Section 21(1)(5) of TNMMDR Act;
3. Vengal Police Station, Crime No.216 of 2016, registered under Sections 36(A) of TNMMDR Act;
4. Vengal Police Station, Crime No.126 of 2017, registered under Sections 36(A) of TNMMDR Act;

3. Further, it is averred in the affidavit that on 05.04.2017, The Sub-Inspector of Police, Vengal Police Station and other police officials in Anaikattu, watched a sand smuggling and ultimately found a vehicle bearing Registration No.TN-05-V-3899 with sand without having any licence or authority. Under such circumstances, a case has been registered in Crime No.141 of 2017 under Sections 294(b), 379, 430, 353, 307 of Indian Penal Code r/w.Section 21(1) of TNMMDR Act, 1957 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 derived a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him as "Sand Offender" by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the detenu himself, as petitioner.

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. The Detaining Authority, after considering 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 has rightly branded him as "Sand Offender" by way of passing the impugned Detention Order and the same is not liable to be quashed 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 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. The learned Additional Public Prosecutor has contended that the representation submitted on the side of the detenu 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, 8 clear working days 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 that 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 Habeas Corpus Petition is allowed and the Detention Order dated 25.04.2017 passed in BCDFGISSSV No.16/2017 by the second respondent against the detenu by name, Elumalai, aged 35 years, S/o.Nainiyappan, residing at No.263, Bramanar Street, Punnapakkam Village, Uthukottai Taluk, Tiruvallur District 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 IV)

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

gpa

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai - 600 009

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2. The District Magistrate and
District Collector
Thiruvallur District
Thiruvallur

3. The Superintendent,
Central Prison, Puzhal II,
Chennai.

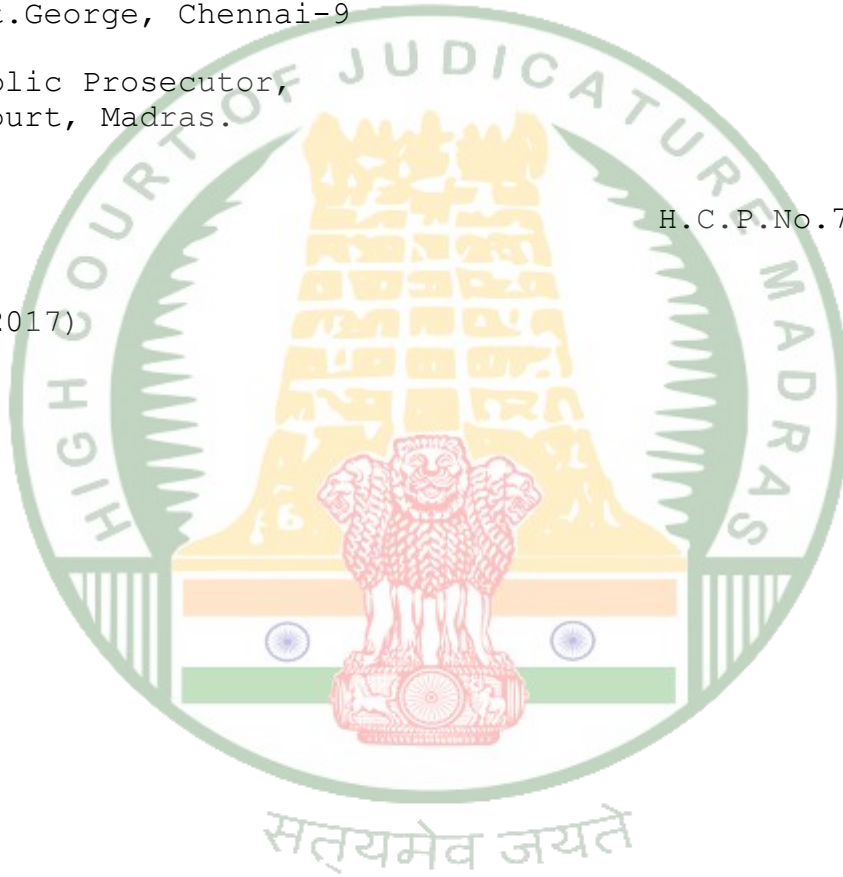
(In duplicate for Communication to the detainee)

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

5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.739 of 2017

KJ(CO)
VR(27/07/2017)



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