

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.09.2017

CORAM

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

H.C.P.No.764 of 2017

Nagalakshmi

.. Petitioner

Vs

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

2.The Commissioner of Police
Salem City, Salem District

3.The Inspector of Police
Ammappettai Police Station
Salem District

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records pertaining to the ordre of detention passed by the second respondent in his proceedings in C.M.P.No.21/GOONDA/SALEM CITY/2017 dated 20.04.2017 and quash the same as illegal and produce the detenu, namely Bharathkumar @ Prabu, S/o.Saravana, aged about 27 years, now he is confined in Central Prison, Salem and set him at liberty.

For Petitioner : Mr.T.Lenin Kumar

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 the records relating to the detention order passed in

C.M.P.No.21/GOONDA/SALEM CITY/2017 dated 20.04.2017, against the detenu by name, Bharathkumar @ Prabu, aged 27 years, S/o.Saravanan, residing at No.4/392, Pallikoodatheru Allikuttai, Veeranam, Salem City and quash the same.

2. The Inspector of Police, Ammapet 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) Veeranam Police Station, Crime No.74 of 2015, registered under Section 326(A) of Indian Penal Code.

3. Further it is averred in the affidavit that on 06.04.2017, one Saravanan, aged 33 years, S/o.Balakrishnan, 21, Thiyaagi Natesan Street, Ammapet, Salem, as defacto complainant, has given a complaint in Ammapet Police Station, wherein it is alleged to the effect that in the place of occurrence, the detenu has unlawfully detained the defacto complainant and also tried to attack him. Under such circumstance, a case has been registered in Crime No.221 of 2017 under Sections 341, 387 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 mother of the detenu, as petitioner.

5. On the side of the respondents, counter has not been filed. Under such circumstance, this petition is disposed of on merits on the basis of available materials on record.

6. The learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, a representation has been given, but the same has 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 to the effect that the representation submitted on the side of the detenu has been duly disposed of without delay and therefore, the contention put forth 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, 16 clear working days are available and in between column Nos.12 and 13, 2 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.

9. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 20.04.2017 passed in C.M.P.No.21/Goonda/Salem City/2017 by the second respondent against the detenu by name, Bharathkumar @ Prabu, aged 27 years, S/o.Saravanan is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

gpa

To

- 1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
- 2.The Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Fort St. George
Chennai - 600 009
- 3.The Commissioner of Police
Salem City, Salem District
- 4.The Inspector of Police
Ammapettai Police Station
Salem District
- 5.The Superintendent
Central Prison
Salem
[in duplicate for communication to the detenu]
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Lenin Kumar, Advocate in sr.no.68776

H.C.P.No.764 of 2017

SAI (CO)

NR 20/09/2017