

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2017

CORAM

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

H.C.P.No.766 of 2017

Balamurugan @ Gana Bala ... Petitioner/detenu

Vs

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

2.The Commissioner of Police
Greater Chennai Police ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records connected with the order of the 2nd respondent herein in Memo No.205/BCDFGISSSV/2017 dated 21.04.2017 against the detenu, namely Balamurugan @ Gana Bala, aged 36 years, S/o.Varadharajan, who is confined at Central Prison, Puzhal, Chennai, set aside the same and consequently direct the respondents to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : M/s.Ilayaraja Kandasamy

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 Memo BCDFGISSSV No.205/2017 dated 21.04.2017 by the Detaining Authority against the detenu by name, Balamurugan @ Gana Bala, aged 36 years,

S/o.Varadharajan, No.12, Church Road, Rathinamangalam, Chennai - 600 127 and quash the same.

2. The Inspector of Police, Law and Order, S-14, Peerkankaranai 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 cases:

1. S-15 Selaiyur Police Station, Crime No.2671 of 2016, under Sections 8(C), 20(b)(II)(B) of NDPS Act; and

2. S-14, Peerkankaranai Police Station, Crime No.596 of 2017, under Sections 341, 294(b), 323, 326, 427, 392, 397 and 506 (ii) of Indian Penal Code.

3. Further it is averred in the affidavit that on 16.03.2017, the Sub-Inspector of Police and other police personnel attached to Law and Order Police Station, Peerkankaranai, have watched the vehicle in connection with smuggling of Ganja and in the place of occurrence, the detenu is found in possession of 3.500 grams of Ganja and after observing due formalities, a case has been registered in Crime No.604/2017 under Sections 8(C) r/w. 20(b)(II)(B) of NDPS Act 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 "Drug 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. On the side of the respondents, a counter has been filed wherein it is contended inter alia 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 the relevant materials and other connected papers, has derived a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as "Drug Offender" by way of passing 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/detenu has contended to the effect that on the side of the detenu, two representations are submitted to the concerned authorities and 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 equally contended to the effect that the representations submitted on the side of the detenu are duly disposed of without delay and under said circumstances, 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 is clearly stated that in respect of first representation, in between column Nos.7 and 9, seven clear working days are available and in between column Nos.12 and 13, fifteen clear working days are available. Likewise, in respect of second representation, in between column Nos.7 and 9, five clear workings days are available and in between column Nos.12 and 13, five clear working days are available and no explanation has been given on the side of the respondents with regard to such 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 21.04.2017 passed in BCDFGISSSV No.205/2017 by the Detaining Authority against the detenu by name, Balamurugan @ Gana Bala, aged 36 years, S/o.Varadharajan, No.12, Church Road, Rathinamangalam, Chennai - 600 127, is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gpa

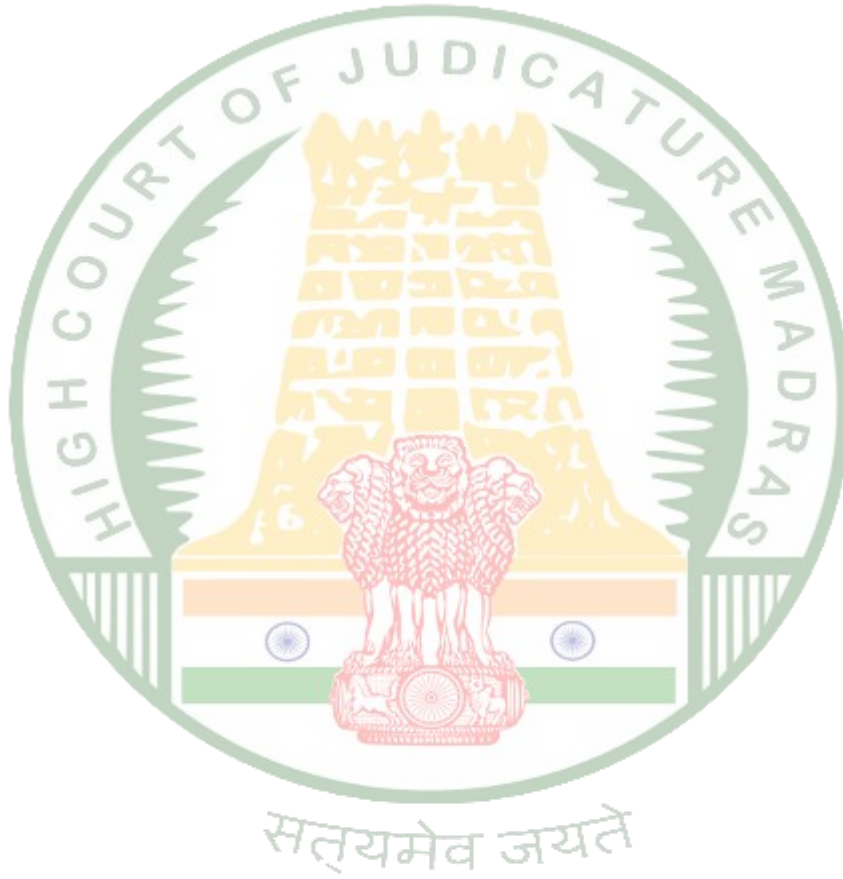
To

1. The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
2. The Secretary to Government,
Prohibition and Excise Department,
Secretariat, Fort St. George
Chennai-9.
3. The Commissioner of Police
Greater Chennai Police

4. The Superintendent
Central Prison, Puzhal, Chennai
(in duplicate for communication to the detenue)
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.766 of 2017

KJ(CO)
NR 07/08/2017



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