

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2017

CORAM

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

H.C.P.No.773 of 2017

M.Prabakaran

.. Petitioner

Vs

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

2. The Commissioner of Police
Chennai City Police
Greater Chennai
Commissioner Office
Vepery
Chennai-600 007

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for records of the detention made in Memo No.227/BCDFGISSSV/2017 dated 29.04.2017 on the file of the second respondent and quash the same and direct the respondents herein to produce the petitioner's son Antony Selvasudan, aged about 24 years, confined at Central Prison, Puzhal and set him at liberty.

For Petitioner : Mr. 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 the records

relating to the detention order passed in Memo No.227/BCDFGIISSSV/2017 dated 29.04.2017, against the detenu by name, Antony Selvasudhan, aged 24 years, S/o.Prabakaran, No.28, Periyar Salai, Ayanavaram, Chennai - 600 023 and quash the same.

2. The Inspector of Police, Soundarapandiyanar 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 cases:-

1. R-4, Soundarapandiyanar Angadi Police Station, Crime No.892/2017, registered under Section 379 of Indian Penal Code;
2. R-6 Kumaran Nagar Police Station, Crime No.817 of 2017, registered under Section 379 of Indian Penal Code;
3. G-1 Vepery Police Station, Crime No.525 of 2017, registered under Section 379 of Indian Penal Code; and
4. F-3 Nungambakkam Police Station, Crime No.1026 of 2017, registered under Section 406 and 420 of Indian Penal Code.

3. Further, it is averred in the affidavit that on 29.03.2017, one Gopinath, aged 23 years, S/o.Rajendran, residing at No.3, Lala Thottam, T.Nagar, Chennai, as defacto complainant, has given a complaint against the detenu, wherein it is alleged to the effect that in the place of occurrence, by showing a deadly weapon, the detenu has forcibly taken away a sum of Rs.250/- and also a cellphone from the custody of the defacto complainant and consequently, a case has been registered in Crime No.896 of 2017 under Sections 341, 397, 336, 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 considering 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 father of the detenu has filed the present petition, as petitioner.

5. On the side of the respondents a counter has been filed wherein it is averred that all 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 all the relevant materials and other connected records, has rightly derived a subjective satisfaction to the effect that the detenu is a habitual offender and branded him as "Goonda" by way of passing the impugned Detention Order and the same does not require any interference 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, 4 clear working days and in between Column Nos.12 and 13, 15 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 29.04.2017 passed in BCDFGISSSV No.227/2017 by the second respondent against the detenu by name, Antony Selvasudan, aged 24 years, S/o.Prabakaran, No.28, Periyar Salai, Ayanavaram, Chennai - 600 023 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 VIII)

/true copy/

Sub Asst. Registrar

gpa

To

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

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2. The Commissioner of Police
Greater Chennai
Office of Commissioner of Police
Vepery, Chennai
3. The Superintendent
Central Prison
Puzhal
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat, Chennai-9.

H.C.P.No.773 of 2017

VGII(CO)
VR(31/07/2017)



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