

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.09.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE S.BASKARAN

H.C.P.No.818 of 2017

Usha

.. Petitioner

Vs

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

2.District Collector & District Magistrate,
Krishnagiri District,
Krishnagiri.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records in connection with the order of detention passed by the 2nd respondent on 09.05.2017 in S.C.No.24/2017 against the petitioner's husband Gopi @ Gopinath, aged 40 years, S/o.Pachiyappan, who is confined at Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.Senthil Vel

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 S.C.No.24/2017 dated 09.05.2017 by the Detaining Authority against the detenu by name, Gopi @ Gopinath, aged 40 years, S/o.Pachiyappan, residing at Rangapuram, Koormapalaiyam Village, Venkatasamuthiram Post, Ambur Taluk, Vellore District and quash the same.

2. The Inspector of Police, Prohibition Enforcement Wing, Krishnagiri 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. Vaniyambadi Prohibition Enforcement Wing Crime No.236/2016 registered under Sections 4[1][aaa] r/w 4[1-A] of Tamil Nadu Prohibition Act, 1937 and 420, 468 and 471 of the Indian Penal Code and 7 of TNRS Rules, 2000.
- ii. Umarabad Police Station Crime No.394/2016 registered under Sections 4[1][i], 4[1][aaa] r/w 4[1-A] of Tamil Nadu Prohibition Act, 1937 @ 4[1][i][aaa] of Tamil Nadu Prohibition Act, 1937.

3. Further, it is averred in the affidavit that on the basis of information received on 07.04.2017, at about 9.00 a.m., the Sub Inspector of Police, Prohibition Enforcement Wing, Krishnagiri, and others have intercepted a vehicle bearing registration No.TN73 8172 and found two persons namely, Eswaran and Mathiyalagan and also others and subsequently, founded some illicit arrack in the old bottles of TASMAL and consequently, a case has been registered in Crime No.384/2017 registered under Sections 4[1][aaa] r/w 4[1-A] of Tamil Nadu Prohibition Act, 1937 and Sections 468, 471 and 420 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 perusing all the relevant records, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him as bootlegger by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the wife of the detenu as petitioner.

5. In the counter filed on the side of the respondents, it is averred 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 material records, 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 need not be quashed 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 petitioner, 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 to the effect that the representation submitted on the side of the petitioner 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 is clearly stated that in between column Nos.7 to 9, 26 clear working days are available and in between column Nos.12 and 13, 16 clear working days are available and no explanation has been given on the side of the respondents for 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 09.05.2017 passed in S.C.No.24/2017 by the Detaining Authority against the detenu by name, Gopi @ Gopinath, aged 40 years, S/o.Pachiyappan, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gya

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, Chennai-9.

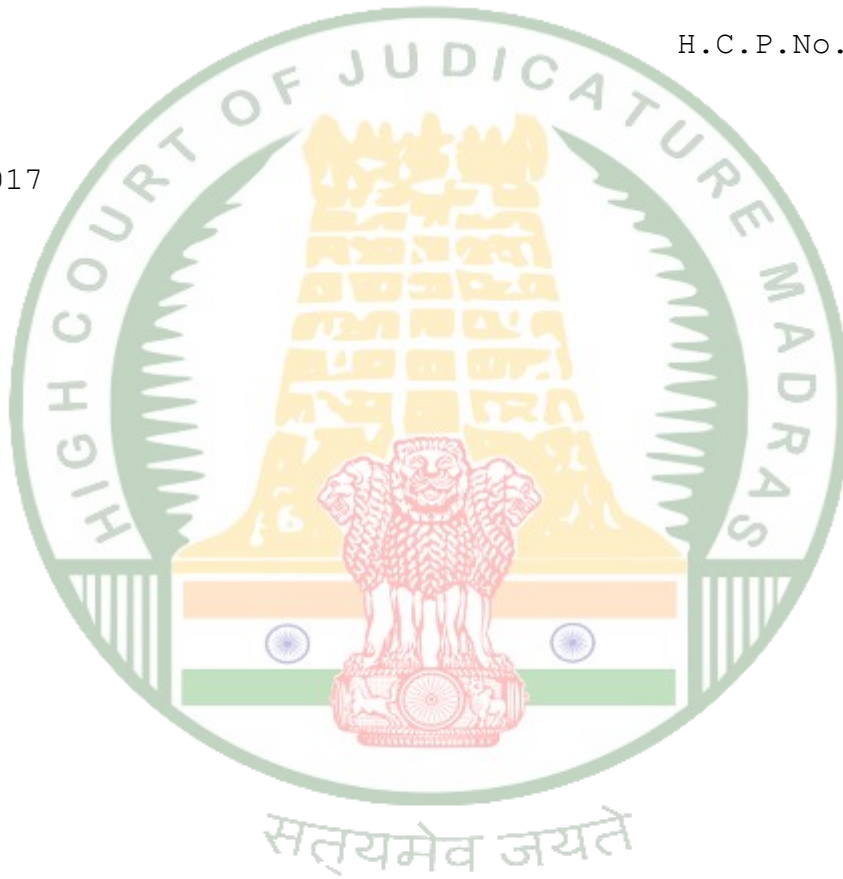
3.The District Collector & District Magistrate,
Krishnagiri District,
Krishnagiri.

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

5.The Public Prosecutor,
High Court, Madras.

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