

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.09.2017

CORAM

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

H.C.P.No.828 of 2017

Banu

.. Petitioner

Vs

1. The Secretary to 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, calling for the records in connection with the order of detention passed by the second respondent dated 11.04.2017 in Memo No.153/BCDFGISSSV/2017 against the petitioner husband Viji, male aged 30 years, S/o.Baskar, who is confined at Central Prison, Puzhal II, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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.153/BCDFGISSSV/2017 dated 11.04.2017, against the detenu by name, Viji, aged 30 years, S/o.Baskar, No.813, 'K' Block, Pachiakkal Veerasamy Housing Board, Ayanavaram, Chennai-23 and quash the same.

2. The Inspector of Police, Ayanavaram 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) K-2 Ayanavaram Police Station, Crime No.437 of 2015, registered under Sections 341, 294(b), 397 and 506(ii) of Indian Penal Code;

ii) K-2 Ayanavaram Police Station, Crime No.1893 of 2016, registered under Sections 341, 294(b), 332, 307 and 506(ii) of Indian Penal Code; and

iii) K-2 Ayanavaram Police Station, Crime No.58 of 2017, registered under Sections 341, 294(b), 392 & 506(ii) of Indian Penal Code altered into Sections 341, 294(b), 397 and 506(ii) of Indian Penal Code.

3. Further it is averred in the affidavit that on 19.03.2017, one Subramani, aged 37 years, S/o.Nallappan, residing at No.18, Thiru Vi Ka Street, Vellalar Street, Ayanavaram, Chennai-23, as defacto complainant, has given a complaint against the detenu in Ayanavaram Police Station, wherein it is alleged that in the place of occurrence the detenu has tried to attack the defacto complainant and also caused damage to properties. Under such circumstance, a case has been registered in Crime No. 606 of 2017 under Sections 341, 294(b), 336, 397, 506(ii) of Indian Penal Code r/w.Section 3(1) of TNPPDL Act 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 wife of the detenu, as petitioner.

5. On the side of the respondents, counter has not been filed. Under such circumstance, this Habeas Corpus 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. 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 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, 3 clear working days are available and in between column Nos.12 and 13, 11 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 11.04.2017 passed in Memo No.153/BCDFGISSSV/2017 by the second respondent against the detenu by name, Viji, aged 30 years, S/o.Baskar, 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 III)

/true copy/

Sub Asst. Registrar

gpa

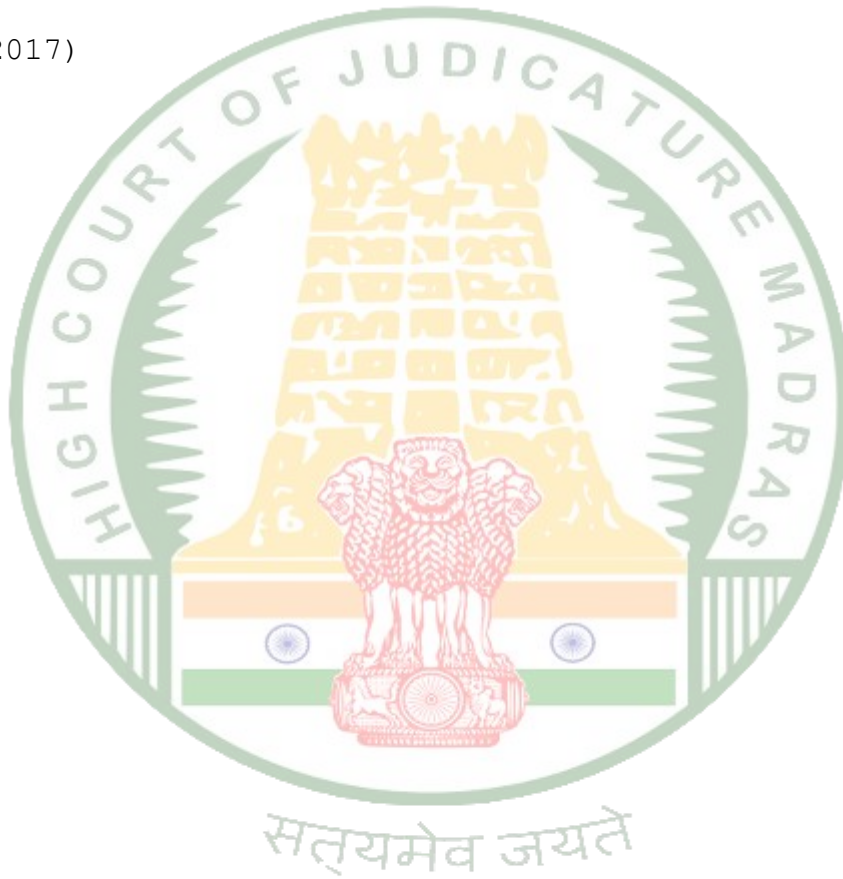
To

1. The Joint Secretary to Government of Tamil Nadu, Public [Law and Order] Department, Secretariat, Chennai-9.
2. The Secretary to Government of Tamil Nadu Home, Prohibition and Excise Department Secretariat Chennai - 600 009
3. The Commissioner of Police Greater Chennai Police

4. The Superintendent
Central Prison
Puzhal, Chennai
[in duplicate for communication to the detenu]
5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.828 of 2017

SCD(CO)
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