

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

CORAM

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

H.C.P.No.853 of 2017

Ashok

... Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Chennai Police,
Vepery, Chennai-7.

... 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 leading to the detention of the petitioner's brother Thillana @ Arputharaj, aged 23 years, S/o.Anandan is presently lodged in Central Prison, Puzhal, Chennai and has been detained under Act 14/82 as a Goonda vide detention order dated 14.01.2017 on the file of the 2nd respondent herein made in Memo No.33/BCDFGISSSV/2017 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Hon'ble Court and thereafter set him at liberty.

For Petitioner : Mr.M.Rajavelu

For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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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 BCDFGISSSV No.33/2017 dated 14.01.2017 by the Detaining Authority against the detenu

by name, Thillana @ Arputharaj, aged 23 years, S/o. Anandan, residing at No.14630, Kannagi Nagar, Chennai-97 and quash the same.

2. The Inspector of Police, J-11 Kannaki Nagar 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. J-11 Kannaki Nagar Police Station Crime No.630/2015 registered under Sections 341, 294[b], 323, 384 and 506[ii] of IPC.
- ii. J-11 Kannaki Nagar Police Station Crime No.638/2015 registered under Sections 341, 294[b], 336, 427, 392, 397 and 506[iii] of IPC.
- iii. J-11 Kannaki Nagar Police Station Crime No.661/2016 registered under Sections 341, 294[b], 384 and 506[iii] of IPC.

3. Further, it is averred in the affidavit that on 30.10.2016, one D. Jayapremila, Sub Inspector of Police attached to J-11 Kannaki Nagar Police Station has received an information from the Government Hospital and immediately, she has gone there and recorded a statement from one Mrs. Manjula, wherein, it is alleged to the effect that in the place of occurrence, the present detenu and others have indiscriminately attacked one Thiru Kaliya and due to their overt acts, he passed away. Further, they also attacked one Sakthivel by using deadly weapons and in the said circumstances, a case has been registered in Crime No.1505/2016 under Sections 147, 148, 294 [b], 324, 307 and 302 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 documents, has arrived at a subjective satisfaction 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 brother 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 supplied all the relevant materials to the Detaining Authority. The Detaining Authority after considering all the relevant materials and other connected papers, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and rightly branded him as goonda 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 has contended to the effect that on the side of the detenu, a representation has been submitted to the concerned authorities. 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 that the representation submitted on the side of the detenu has been 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 are available. Likewise, in between column Nos.12 and 13, 8 clear working days are available and no explanation has been given on the side of the respondents 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 14.01.2017 passed in BCDFGISSV No.33/2017 by the Detaining Authority against the detenu by name, Thillana @ Arputharaj, aged 23 years, S/o.Anandan 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 III)

//True Copy//

सत्यमेव जयते
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,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

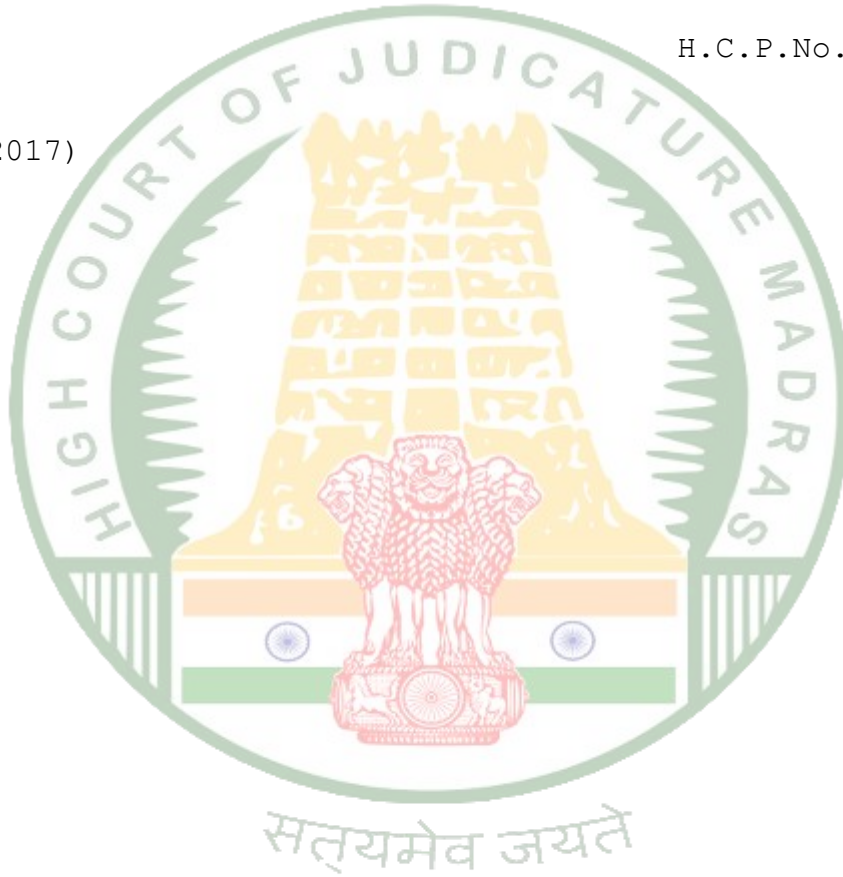
3.The Commissioner of Police,
Chennai Police,
Vepery, Chennai-7.

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.853 of 2017

SVI (CO)
CA(02/08/2017)



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