

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2017

CORAM

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

H.C.P.No.900 of 2017

Mohana

.. Petitioner

Vs

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

2.The Commissioner of Police
Chennai City Police
Greater Chennai
Commissioner Office, Frillery
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 the records relating to the impugned order in No.230/BCDFGISSSV/2017 dated 08.05.2017 on the file of second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Moses Jebaselvan, Son of A.R.Victor, aged about 25 years, now confined at Central Prison, Puzhal, Chennai before this Court 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.230/BCDFGISSSV/2017 dated 08.05.2017, against the detenu by

name, Moses Jebaselvan, aged 25 years, S/o.A.R.Victor, No.797, N.V.N.Nagar, 7th Street, Thirumangalam, Chennai - 600 040 and quash the same.

2. The Inspector of Police, F-3 Nungambakkam 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:-

- i) T-3 Korattur Police Station, Crime No.622 of 2017, registered under Section 394 of Indian Penal Code;
- ii)V-5, Thirumangalam Police Station, Crime No.327 of 2017, registered under Section 394 of Indian Penal Code;
- iii) K8, Arumbakkam Police Station, Crime No.529 of 2017, registered under Section 394 @ 397 of Indian Penal Code;
- iv) R-4 Soundarapandiyanar Angadi Police Station, Crime No.768 of 2017, registered under Section 332, 324 and 506(ii) of Indian Penal Code; and
- v) F-3 Nungambakkam Police Station, Crime No.845 of 2017, Crime Nos.341, 397 and 506(ii) of Indian Penal Code.

3. Further, it is averred in the affidavit that on 11.03.2017, one Jalaludeen, aged 23 years, S/o.Meeran Moideen, residing at No.45/48, Sanjay Gandhi Nagar 4th Street, I.O.C Tondiarpet, Chennai - 81, as defacto complainant, has given a complaint against the detenu wherein it is alleged that on the same day in the place of occurrence by showing a knife, the detenu has forcibly taken away a sum of Rs.680 and a cellphone from the defacto complainant and also threatened him. Under such circumstance, a case has been registered in Crime No.846 of 2017, under Sections 341, 294(b), 336, 427, 392, 397 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 documents, has derived 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 mother of the detenu, as petitioner.

5. On the side of the respondents, counter has not been filed. Therefore, the present petition is disposed of on merits on the basis of available materials on records.

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, 4 clear working days are available and in between column Nos.12 and 13, 4 clear working days are available and no explanation has been given on the side of the respondents with regard to such huge 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 08.05.2017 passed in Memo No.230/BCDFGISSSV/2017 by the second respondent against the detenu by name, Moses Jebaselvan, aged 25 years, S/o.A.R.Victor, 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 IV)

/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
Home, Prohibition and Excise Department
Fort St. George
Chennai - 600 009

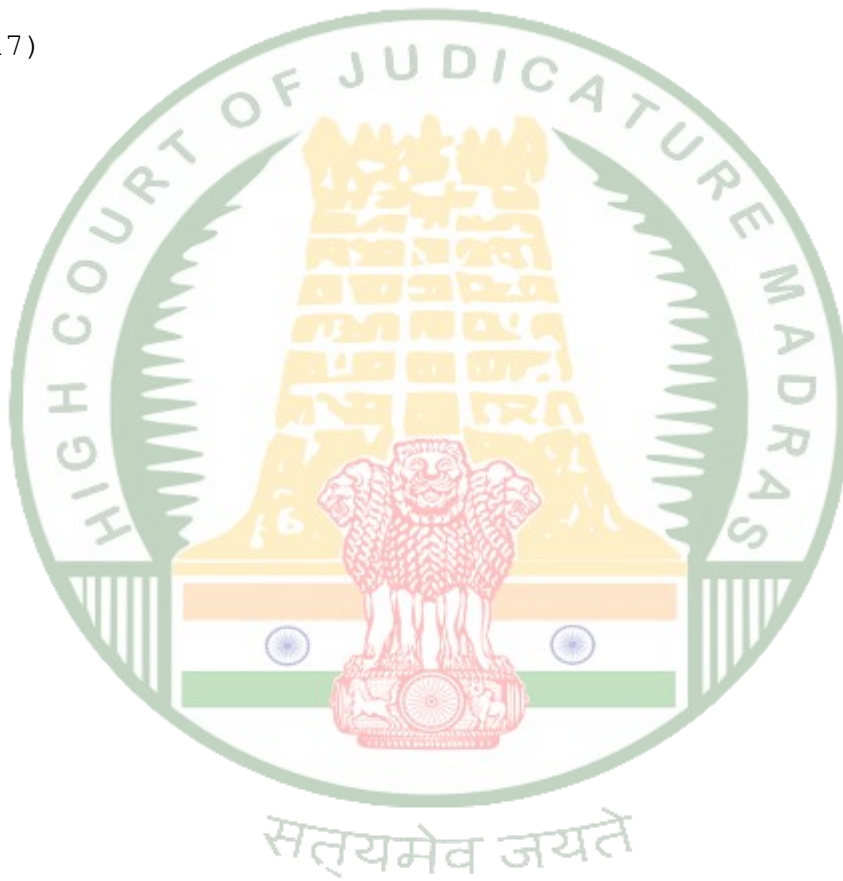
3.The Commissioner of Police
Chennai City Police
Greater Chennai
Commissioner Office, Frippery
Chennai - 600 007

4.The Superintendent
Central Prison, Puzhal
[In duplicate for communication to the detenu]

5.The Public Prosecutor,
High Court, Madras.

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cp(co)
ss(1/9/2017)



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