

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.935 of 2017

Makbul Jhon ... Petitioner

Vs

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

2.The District Collector and District Magistrate,
Krishnagiri District. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records pertaining to the detention order made in S.C.No.70/2016 dated 29.12.2016 in detaining the detenu under Tamil Nadu Act 14/1982 as Goonda and quash the same and direct the respondents to produce the detenu namely, Sadham Hussain, aged 24 years, S/o.Makbul Jhon, who is detained in Central Prison, Salem, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.V.Sakkarapani

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.70/2016 dated 29.12.2016 by the Detaining Authority against the detenu by name, Sadham Hussain, aged 24 years, S/o.Makbul Jhon, residing at Ramasamy Koil Backside, Karimangalam, Karimangalam Taluk, Dharmapuri District and quash the same.

2. The Inspector of Police, Kaveripattinam 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. Karimangalam Police Station Crime No.128/2016 registered under Section 394 of the Indian Penal Code.
- ii. Kaveripattinam Police Station Crime No.177/2016 registered under Sections 454 and 380 of the Indian Penal Code.
- iii. Kaveripattinam Police Station Crime No.224/2016 registered under Sections 397 and 506[iii] of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 30.11.2016, at about 8.00 a.m., one Karthick, S/o.Mohan, residing at Bothaiyanaidu Street, Kaveripattinam, Krishnagiri Taluk & District, as de facto complainant has given a complaint in Kaveripattinam Police Station, wherein, it is alleged to the effect that on the same day, at about 6.00 a.m., in the place of occurrence, by showing a knife, the detenu has forcibly taken away a sum of Rs.1,350/- from the de facto complainant and also threatened him and consequently, a case has been registered in Crime No.783/2016 under Sections 392 r/w 397 and 506[iii] 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 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 father 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 materials to the Detaining Authority. The Detaining Authority after perusing all the relevant materials, has rightly arrived to a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, passed 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 given 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. 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 is clearly stated that in between column Nos.7 to 9, 34 clear working days are available. Further, it is seen from the proforma that the representation submitted to the Deputy Secretary on 28.07.2017, but so far, it has not been disposed of and no explanation has been given on the side of the respondents with regard to such 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 29.12.2016 passed in S.C.No.70/2016 by the Detaining Authority against the detenu by name, Sadham Hussain, aged 24 years, S/o.Makbul Jhon, 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

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To

1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.

2.The Secretary to Government,
Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

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

4.The Superintendent,
Central Prison, Salem.

5.The Public Prosecutor,
High Court, Madras.

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ss(1/9/2017)



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