

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2017

CORAM

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

H.C.P.No.947 of 2017

Kalaivani

.. Petitioner

Vs

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

2. The Commissioner of Police
Poonamallee High Road
Vepery
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 in Memo No.182/BCDFGISSSV/2017 dated 15.04.2017 passed by the second respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's husband Senthilkumar @ Kulla Kanda, S/o.Gopal, aged about 31 years, now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.C.Mohan Raj

For Respondents : Mr.V.M.R.Rajentren
Addl. Public Prosecutor for R2&R3

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.182/BCDFGISSSV/2017 dated 15.04.2017, against the detenu by name, Senthilkumar @ Kulla Kanda, aged 31 years, S/o.Gopal,

No.96/3, Thanthai Periyar Street, Sivanandam Nagar, Ambattur, Chennai - 600 053 and quash the same.

2. The Inspector of Police, K-4 Anna 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:

1. K-4 Anna Nagar Police Station, Crime No.377 of 2017, registered under Sections 341, 294(b), 324 and 506(ii) of Indian Penal Code, altered to Sections 341, 294(b), 324, 307 and 506(ii) of Indian Penal Code;
2. K-4 Anna Nagar Police Station, Crime No.451 of 2017, registered under Sections 341, 323, 294(b), 392 and 506 (ii) of Indian Penal Code; and
3. K-3 Aminjikarai Police Station, Crime No.613 of 2017, registered under Sections 341, 294(b), 384 and 506(ii) of Indian Penal Code.

3. Further, it is averred in the affidavit that on 29.03.2017, one Saravanan, aged 47 years, S/o.Karuppaiah, residing at No.82/43, Shanmugasundaram Street, Saligramam, Chennai-93, has given a complaint in K4 Anna Nagar Police Station wherein it is stated to the effect that in the place of occurrence by showing a knife, the detenu has forcibly taken a sum of Rs.525/- from the cash box of the defacto complainant and also created panic in the minds of the general public. Under the said circumstances, a case has been registered in Crime No.459 of 2017 under Sections 341, 294(b), 427, 336, 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 materials, 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. In the counter filed on the side of the respondents it is averred to the effect that most of the averments made in the affidavit are false and the Sponsoring Authority has submitted all the relevant materials to the Detaining Authority. The Detaining Authority after perusing all the relevant materials and other connected papers, has derived 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, 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 given on the side of the detenu has been disposed of without delay. Under the said circumstances, 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 to the effect that in between column Nos.7 and 9, four clear working days are available and in between column Nos.12 and 13, 25 clear working days are available and no explanation has been given on the side of the respondents with regard to 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 Habeas Corpus Petition is allowed and the Detention Order dated 15.04.2017 passed in Memo No.182/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Senthilkumar @ Kulla Kanda, aged 31 years, S/o.Gopal, No.96/3, Thanthai Periyar Street, Sivanandam Nagar, Ambattur, Chennai - 600 053 is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/--
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

gpa

To

1.The Secretary to Government,
Home Prohibition and Excise Department,
Fort St.George,
Chennai 600 009

2.The Commissioner of Police,
Poonamallee High Road
Vepery, Chennai-7

3.The Joint Secretary to Government
Public [Law and Order]
Secretariat, Chennai-9.

4.The Superintendent,
Central Prison,Puzhal Chennai.
(In Duplicate for Communication to Detenue)

5.The Public Prosecutor,
High Court, Madras.

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MQ (CO)
NR 08/08/2017



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