

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.96 of 2017

Chinnaraj @ Udayan

... Petitioner

Vs.

1. The State of Tamil Nadu,
rep.by its Secretary to Government,
Home, Prohibition and Excise Dept.,
Fort St.George, Chennai-09.

2. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goonda Section)
Vepery, Chennai-600 007

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records relating to detention order under the Tamil Nadu Act 14 of 1982, vide Memo No.1031/16/BCDFGISSSV, dated 03.09.2016, on the file of the second respondent to produce the body of detenu Chinnaraj @ Udayan, Son of Devan, aged 33 years, who was confined in Central Prison, Puzhal Jail, before this Court and set him at liberty in the interest of justice.

For Petitioner : Mr.G.Natarajan

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

WEB COPY
ORDER
(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 detention order, passed in No.1031/BCDFGISSSV/2016, dated 03.09.2016, by the detaining authority, who has been arrayed as the second respondent herein, against the detenu, by name Chinnaraj @ Udayan, aged 33 years, son of Devan, No.82/43, Muthu Street, Royapettah, Chennai-14 and quash the same.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Inspector of Police, E2-Royapettah Police Station, as sponsoring authority, has submitted an affidavit

to the detaining authority, wherein it is averred to the effect that on 24.06.2016, one Raja Bathar, aged 73 years, son of Elumalai, residing at No.82/43, Muthu Street, Royapettah, Chennai-14, as defacto complainant, has given a complaint, wherein it is stated that the detenu has resided in one of his houses along with his family members, as tenant. Before 20.06.2016, he has gone to his native village. On 23.06.2016, he returned to Chennai. The defacto complainant has noticed that stench emanated from the house where the detenu has resided and after some time, opened the door and noticed that the wife of the detenu and his three daughters are found dead and consequently, a case has been registered in Crime No.514 of 2016, under Section 302 of the Indian Penal Code and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

3. The detaining authority, after considering the averments made in the affidavit and other connecting documents, has derived subjective satisfaction to the effect that the detenu has committed grave offence and ultimately branded him as a 'Goonda' by way of passing the impugned detention order and in order to quash the same, the present petition has been filed by the detenu himself, as petitioner.

4. 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 relevant materials to the detaining authority. The detaining authority, after considering all the relevant materials and other connected documents, has derived subjective satisfaction to the effect that the detenu has committed grave offence and ultimately branded him as a 'goonda' by way of passing the impugned detention order and the same does not require any interference and therefore, the present petition deserves to be dismissed.

5. The learned counsel appearing for the petitioner has contended to the effect that the detenu was arrested on 24.06.2016, but the factum of arrest has not been intimated to proper person and on that ground alone, the detention order in question is liable to be quashed.

6. Per contra, the learned Additional Public Prosecutor has represented that immediately after arrest, the factum of arrest of the detenu has been intimated to one Abdul Razack, who is none other than the owner of the detenu and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

7. It is seen from the records that one Raja Bather has let out a house on monthly basis to the detenu and even in the complaint it has been specifically stated that Raja Bather is the owner of the house, wherein the detenu along with his family members have resided. Therefore, it is quite clear that the defacto complainant, viz., Raja Bather, is none other than the owner of the house of the detenu.

8. Further it is seen from the records that the detenu has been arrested on 24.6.2016. In the arrest memo it has been mentioned to the effect that the factum of arrest has been duly informed to one Abdul Razack, who is none other than the owner of the detenu. As adverted to earlier, the said Abdul Razack is not the owner of the house where the detenu has resided. Further, no details are available with regard to the said Abdul Razack. Under such circumstances, this Court is of the view that the factum of arrest of the detenu has been informed to a fictitious person and that itself 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.

In fine this Habeas Corpus Petition is allowed. The detention order dated 03.09.2016, passed in No.1031/BCDFGISSSV/2016, by the detaining authority against the detenu, by name Chinnaraj @ Udayan, son of Devan, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msh

To

1. The Joint Secretary to Government of
Tamil Nadu,
Public (Law and Order) Department,
Secretariat, Chennai-9.
2. The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Chennai-600 009
3. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
(Goonda Section)
Vepery, Chennai-600 007
4. The Superintendent of Prison,
Puzhal, Chennai.
5. The Public Prosecutor,
High Court, Madras.