

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.09.2017

CORAM

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

H.C.P.No.973 of 2017

P.Jothi

.. Petitioner

Vs

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

2. The Commissioner of Police
Salem City

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to produce the body of the detenu namely, Kunjayee @ Deva son of Perumal, aged about 19 years before this Court and set him at liberty forthwith by calling for the records pertaining to the detention order in C.M.P.No.11/Goonda/Salem City/2017 dated 01.03.2017 passed by the 2nd respondent, quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.R.Ezhilarasan

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 the records relating to the detention order passed in C.M.P.No.11/Goonda/Salem City/2017 dated 01.03.2017, against the detenu by name, Kunjayee @ Deva, aged 19 years, S/o.Perumal,

Vinayagapuram, Narasingapuram, Attur Taluk, Salem District and quash the same.

2. The Inspector of Police, Ammapet 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) Ammapet Police Station, Crime No.14/2017, registered under Sections 457 and 380 of Indian Penal Code; and

ii) Ammapet Police Station, Crime No.15/2017, registered under Section 379 of Indian Penal Code.

3. Further it is averred in the affidavit that on 07.01.2017, one Karthikeyan, aged 22 years, S/o.Sankar, Mariamman Koil Street, Periya Veeranam, Salem, as defacto complainant, has given a complaint wherein it is averred to the effect that in the place of occurrence, the detenu has illegally deterred him and also tried to attack him. Under such circumstance, a case has been registered in Crime No.7 of 2017 under Sections 341, 387 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 "Goonda" 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. Under such circumstance, this petition is disposed of on merits on the basis of available materials on record.

6. The learned counsel appearing for the petitioner has contended to the effect that in the ground case, the detenu has been arrested by the Inspector of Police, Ammapet Police Station and subsequently the detenu has been arrested in connection with two adverse cases, but the factum of arrest has not been intimated to anybody except to authorities of prison and the same would affect the rights of the detenu and therefore, the detention order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has contended that initially the detenu has been arrested in connection with ground case and subsequently he has been arrested in connection with adverse cases and the factum of arrest has been duly intimated to the jail authorities and therefore, the contention

put forth on the side of the petitioner is liable to be rejected.

8. It is seen from the records that for the first time, the detenu has been arrested in connection with ground case and thereafter, he has arrested in respect of adverse cases. As rightly pointed out on the side of the petitioner, the factum of arrest made in respect of adverse cases have not been duly informed either to the parents or close relatives or friend of the detenu and that the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India.

9. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 01.03.2017 passed in C.M.P.No.11/Goonda/Salem City/2017 by the second respondent against the detenu by name, Kunjayee @ Deva, aged 19 years, S/o.Perumal, 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 IV)

//True Copy//

Sub Assistant Registrar

gpa

To

- 1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
- 2.The State of Tamil Nadu
Rep. By its Secretary to Government
Prohibition and Excise Department
Fort St. George
Chennai - 9
3. The Commissioner of Police
Salem City
- 4.The Superintendent
Central Prison
Salem
[in duplicate for communication to the detenu]

5.The Public Prosecutor,
High Court, Madras.

6.The Superintendent
Sub Jail Rasipuram

7.The Superintendent
Borstal School Pudukottai

+1 cc to M/s.R.Ezhilarasan Advocate sr 66540

H.C.P.No.973 of 2017

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