

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM

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

H.C.P.No.974 of 2017

S.P.Mahendiran

... Petitioner

Vs

1. The Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai - 600 009

2. The Commissioner of Police
Greater Chennai Police

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records of the 2nd respondent herein in Memo No.206/BCDFGISSSV/2017 dated 21.04.2017 and set aside the order of detention passed against detenu Selvam, aged 28 years, S/o.Parasuraman, now detained in Central Prison, Puzhal II, Chennai, quash the same, direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

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 BCDFGISSSV No.206/2017 dated 21.04.2017, against the detenu by name, Selvam, aged 28 years, S/o.Parasuraman, residing at No.139, Gangaianman Koil Street, Anna Nagar, Kolapakkam, Chennai - 600 127 and quash the same.

2. The Inspector of Police, S-14 Peerankaranai Police Station, as Sponsoring Authority, has submitted an affidavit to the Detaining Authority, wherein, it is stated to the effect that the detenu has involved in the following adverse cases:

i) Otteri Police Station, Crime No.671 of 2016, registered under Sections 302 of Indian Penal Code, altered into Sections 120(b), 147, 148, 302 of Indian Penal Code r/w. Sections 3 and 6 of Explosive Substances Act; and

ii) S-14, Peerankaranai Police Station, Crime No.757 of 2017, registered under Sections 341, 384 and 506(ii) of Indian Penal Code.

3. Further, it is averred in the affidavit that on 04.04.2017, one Muthu, aged 55 years, S/o.Murugesan, residing at No.25, Nehru Street, New Perungalathur, Chennai - 63, as defacto complainant, has given a complaint against the detenu in S4 Peerankaranai Police Station, wherein it is alleged that in the place of occurrence by showing a knife, the accused has taken a sum of Rs.660/- from the shirt pocket of the defacto complainant and he has also threatened him. Under such circumstances, a case has been registered in Crime No.765 of 2017 under Sections 341, 294(b), 323, 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 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 brother of the detenu, as petitioner.

5. On the side of the respondents, a counter has been filed, wherein, it is contended 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 the relevant materials and other connected documents, has 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. The learned counsel appearing for the petitioner has raised the following points:

i) On the side of the detenu, a representation has been submitted, but, the same has not been disposed of without delay.

ii) The Detaining Authority has furnished a booklet to the detenu wherein at Page No.51, copy of the inquest report is available, but the same is not readable.

7. The learned Additional Public Prosecutor has contended to the effect that the representation submitted on the side of the detenu has been duly disposed of without delay and therefore, the first contention urged on the side of the petitioner is liable to be rejected. With regard to the second ground urged on the side of the petitioner, the learned Additional Public Prosecutor has submitted that the copy of the inquest report available at Page No.51 of the Booklet is easily readable and therefore, the second ground put forth on the side of the petitioner is also equally 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, three clear working days are available and no explanation has been given on the side of the respondents with regard to such delay.

9. With regard to the second ground, this Court has perused Page No.51 of the booklet, wherein a copy of the inquest report has been attached to. But, as rightly pointed out on the side of the petitioner, the same is not readable. Under such circumstance, on the basis of the grounds mentioned supra, this Court is of the view that the rights of the detenu guaranteed under Article 22(5) of the Constitution of India is affected and therefore, the Detention Order in question is liable to be quashed.

10. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 21.04.2017 passed in BCDFGISSSV No.206/2017 by the second respondent against the detenu by name, Selvam, aged 28 years, S/o.Parasuraman, residing at No.139, Gangaianman Koil Street, Anna Nagar, Kolapakkam, Chennai - 600 127 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 V)

//True Copy//

Sub Assistant Registrar

gpa

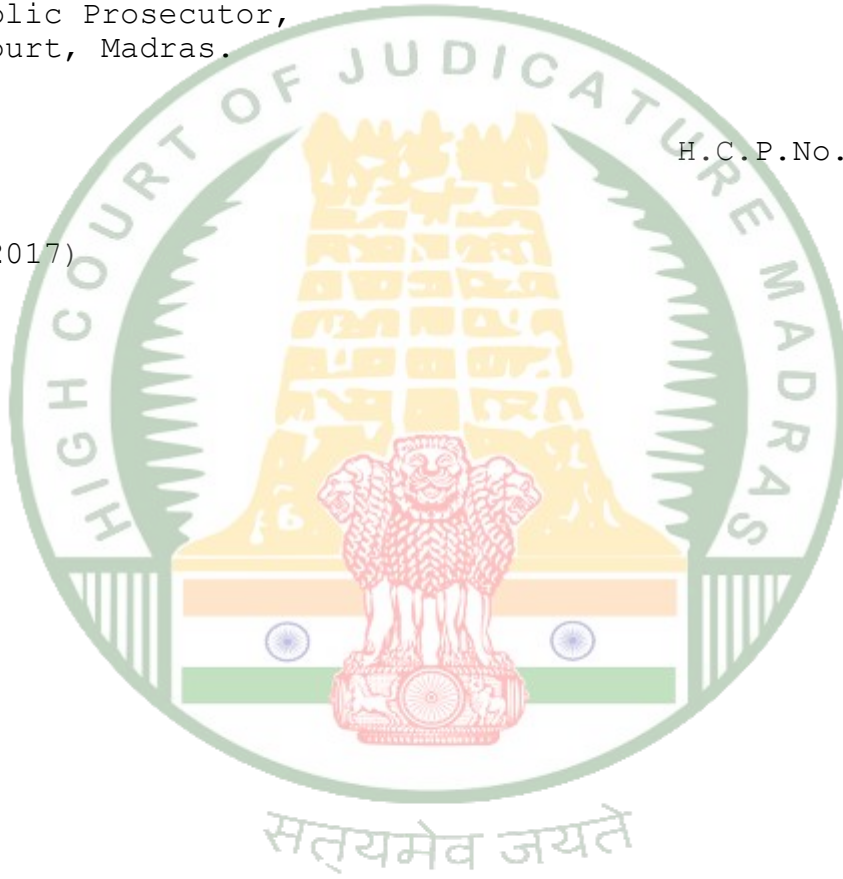
To

1. The Secretary to Government
Prohibition and Excise Department (Home)
Secretariat, Chennai - 600 009

2. The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9
3. The Commissioner of Police
Greater Chennai Police
4. The Superintendent
Central Prison, Puzhal II,
Chennai - 66
5. The Public Prosecutor,
High Court, Madras.

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RR(CO)
CA(09/08/2017)



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