

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.08.2017

CORAM

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

H.C.P.No.999 of 2017

Valarmathy

.. Petitioner

Vs

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

2.The Commissioner of Police,
Chennai City Police,
O/o.The Commissioner of Police,
Vepery, Chennai-7.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records relating to the detention order vide memo No.163/BCDFGISSSV/2017 dated 12.04.2017 passed by the 2nd respondent and set aside the same and direct the respondent to produce the body of the detenu Shiyam, aged 29 years, S/o.Pal Jayakumar, now confined in Central Prison, Puzhal, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.P.Rajkumar Pandian

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 No.163/BCDFGISSSV/2017 dated 12.04.2017 by the Detaining Authority against the detenu by name, Shiyam, aged 29 years, S/o.Pal Jayakumar, residing at No.333, 10th Cross Street, TP Chatram, Chennai-30 and quash the same.

2. The Inspector of Police, T.P.Chatram Police Station as Sponsoring Authority has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that in the year 2013, a notorious criminal by name Jayaraj of T.P.Chatram has been murdered by one Murugan @ Theechatti Murugan and his associates. As a measure of talion, the present detenu and others have hatched a conspiracy for the purpose of murdering the said Murugan @ Theechatti Murugan. To the above object, on 30.01.2017 at about 22.00 hrs, the present detenu and others have indiscriminately attacked the said Murugan @ Theechatti Murugan and his associates and due to their overt acts, he passed away and consequently, a case has been registered in Crime No.166/2017 under Sections 147, 148, 449, 452, 506[ii], 307, 302 read with 120[b] of 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 connected documents, has derived to a subjective satisfaction to the effect that the detenu has committed grave offences 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.

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 to a subjective satisfaction to the effect that the detenu has committed grave offences and ultimately, branded him as goonda by way of passing the impugned Detention Order and the same is perfectly correct and therefore, the present petition deserves to be dismissed.

5. Learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, a representation has been submitted 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.

6. Learned Additional Public Prosecutor has contended to the effect that the representation submitted on the side of the petitioner has been duly disposed of without delay and therefore, the contention put forth on the side of the detenu is liable to be rejected.

7. On the side of the respondents, a proforma has been submitted, wherein, it has been clearly stated that in between column Nos.7 to 9, 5 clear working days are available and in between column Nos.12 and 13, 11 clear working days are available 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.

8. In fine, this petition is allowed. The Detention Order dated 12.04.2017 passed in No.163/BCDFGISSSV/2017 by the Detaining Authority against the detenu by name, Shiyam, aged 29 years, S/o.Pal Jayakumar, 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 VI)

/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,
Home, Prohibition and Excise Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

3.The Commissioner of Police,
Chennai City Police,
O/o.The Commissioner of Police,
Vepery, Chennai-7.

4.The Superintendent,
Central Prison, Puzhal, Chennai.
[in duplicate for communication to the detenu]

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.999 of 2017

RR(co)
ss(11/8/2017)