

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.08.2017

CORAM

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

H.C.P.No.2343 of 2016

Mrs.Saranya

.. Petitioner

Vs

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

2.The District Collector
District Magistrate
Cuddalore District

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the entire records connected with the order of the 2nd respondent herein in C.3/D.O/20/2016 dated 31.08.2016 against the petitioner's son, namely Kuzhanthaivel @ Poondi, aged 35 years, S/o.Anbzhagan, who is confined at Central Prison, Cuddalore, set aside the same and consequently direct the respondents to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Sethuvarayar

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 records relating to the detention order passed in C.3/D.O/20/2016 dated 31.08.2016 by the Detaining Authority against the detenu by name, Kuzhanthaivel @ Poondi, aged 35 years, S/o.Anbzhagan,

No.26, Vridhambigai Nagar, Ramachandranpettai, Vridhachalam Taluk, Cuddalore District and quash the same.

2. The Inspector of Police, Vridhachalam 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) Vridhachalam Police Station, Crime No.188 of 2015, under Sections 294(b), 323, 448, 427 and 506(i) of Indian Penal Code; and

ii) Vridhachalam Police Station, Crime No.630 of 2015, under Sections 147, 148, 294(b), 324, 302 of Indian Penal Code, altered to Sections 147, 148, 449, 452, 294(b), 324 and 302 of Indian Penal Code.

3. Further it is averred in the affidavit that on 16.08.2016, the defacto complainant by name Mahendiran, S/o.Azhagappan, a resident of Raman Street, Salem Main Road, Vridhachalam Town, as de facto complainant, has given a complaint against the detenu wherein it is averred to the effect that in the place of occurrence, the detenu has snatched a gold chain and also a sum of Rs.300/- from the custody of the defacto complainant by using a deadly weapon and consequently, a case has been registered in Crime No.649/2016 under Sections 392, 397 and 506(ii) 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 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.

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 records to the Detaining Authority. The Detaining Authority, after considering all the materials and other connected papers, 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 the same does not call for any interference and therefore, the present petition deserves to be dismissed.

5. Learned counsel appearing for the petitioner has contended that in the Detention Order it has been clearly mentioned to the effect that the detenu has been arrested on 16.08.2016 at about 21.15 hours and he has been remanded to custody on 17.08.2016 and further, the Sponsoring Authority has

submitted all the relevant material records to the Detaining Authority on 31.08.2016. The Detaining Authority has passed the impugned Detention Order on the same day and further, on the same day, the Detention Order has been served on the detenu and therefore, the Detaining Authority, without reading all the papers, has erroneously passed the impugned order dated 31.08.2016 and under such circumstance, the impugned Detention Order passed by the Detaining Authority is liable to be quashed.

6. Learned Additional Public Prosecutor has contended that even though the Sponsoring Authority has submitted all the relevant materials to the Detaining Authority on 31.08.2016, on the same day the Detaining Authority has passed the impugned Detention Order and the same has also been served to the detenu without delay and therefore, the contention raised on the side of the petitioner cannot be a sole ground for quashing the impugned Detention Order.

7. It is seen from the records that the Sponsoring Authority has submitted all the relevant material records on 31.08.2016 to the Detaining Authority. The Detaining Authority has passed the impugned Detention Order on 31.08.2016. As rightly pointed out by the learned counsel for the petitioner, the Detaining Authority, without reading all the papers, has mechanically passed the impugned Detention Order on the same day itself and therefore, it is quite clear that the Detaining Authority has not applied his mind properly. Since the Detaining Authority has not applied his mind properly, it is needless to say that the Detention Order has not been passed on merits and on that basis, the Detention Order in question is liable to be quashed.

8. In fine, this petition is allowed. The Detention Order dated 31.08.2016 passed in C.3/D.O/20/2016 by the Detaining Authority against the detenu by name, Kuzhanthaivel @ Poondi, aged 35 years, S/o.Anbazhagan, No.26, Vridhambigai Nagar, Ramachandranpettai, Vridhachalam Taluk, Cuddalore District 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)

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Sub Asst. Registrar

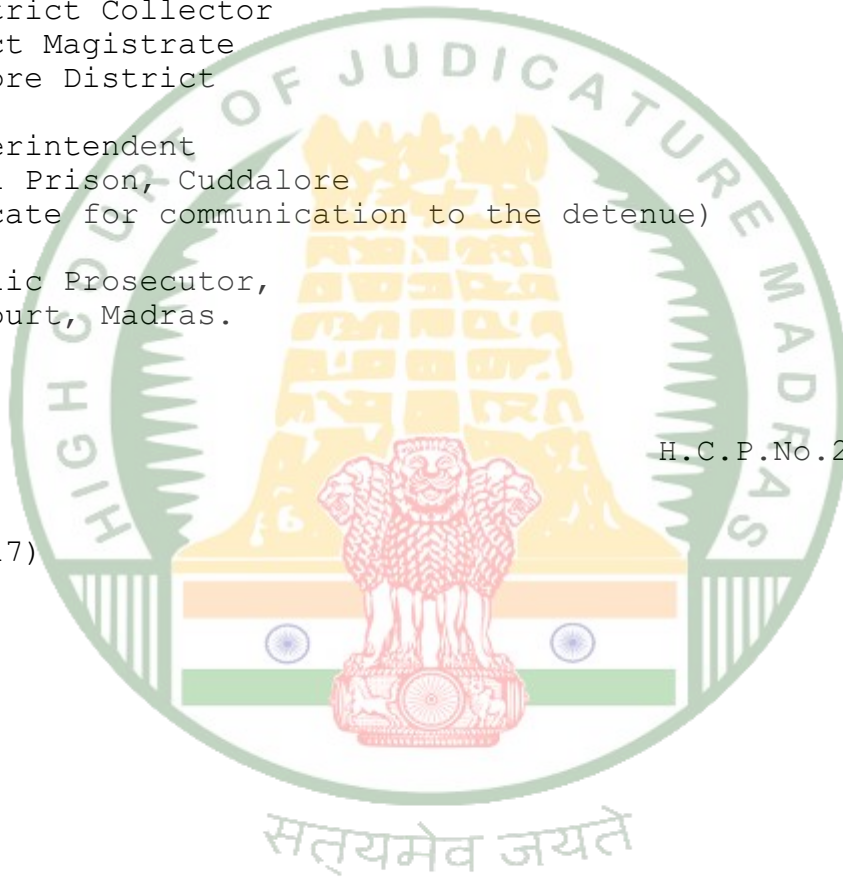
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To

- 1.The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
- 2.The Secretary to Government,
Prohibition and Excise Department,
Secretariat, Fort St. George
Chennai-9.
- 3.The District Collector
District Magistrate
Cuddalore District
- 4.The Superintendent
Central Prison, Cuddalore
(in Duplicate for communication to the detenue)
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2343 of 2016

gp(co)
ss(4/8/2017)



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