

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2017

CORAM

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

H.C.P.No.2367 of 2016

Kalyani

.. Petitioner

Vs

1.State of Tamil Nadu,
Rep. by the Secretary,
Home Prohibition and Excise Department,
Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Greater Chennai,
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.1085/BCDFGISSSV/2016 dated 28.09.2016 passed by the second respondent under Tamil Nadu Act 14/82 and quash the same and produce the detainee Appu @ Janda @ Udayanithi, S/o.Manoharan, age 23 years, confined at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.S.N.Arun kumar

For Respondents : Mr.E.Raja,
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 No.1085/BCDFGISSSV/2016 dated 28.09.2016 passed against the detainee by name, Appu @ Janda @ Udayanithi passed by the second respondent and quash the same.

2. The Inspector of Police, E-2 Royapettah Police Station as Sponsoring Authority has submitted an affidavit to the Detaining Authority, wherein, it is averred that the detainee has involved in the following adverse cases.

- i. E-2 Royapettah Police Station Crime No.480/2016 registered under Section 379 of Indian Penal Code.
- ii. E-2 Royapettah Police Station Crime No.504/2016 registered under Section 379 of Indian Penal Code.
- iii. E-2 Royapettah Police Station Crime No.543/2016 registered under Section 379 of Indian Penal Code.
- iv. E-2 Royapettah Police Station Crime No.562/2016 registered under Section 379 of Indian Penal Code.

3. Further it is averred in the affidavit that on 02.08.2016, one Natarajan has given a complaint against the detainee in E-2 Royapettah Police Station and the same has been registered in Crime No.611/2016 under Section 341, 336, 427, 397 and 506[ii] of Indian Penal Code and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detainee. As per the Detaining Authority, after considering the averments made in the affidavit and other connected documents, has arrived a satisfied conclusion that the detainee is a professional property offender and ultimately, branded him as goonda by passing a Detention Order dated 28.09.2016 and to quash the same, the present petition has been filed by the mother of the detainee as petitioner.

4. On the side of the respondents, a detailed counter has been filed, wherein, it is contended that all the averments made in the affidavit are false. The Detaining Authority after considering the materials submitted by the Sponsoring Authority, derived subjective satisfaction to the effect that the detainee is a professional offender and rightly branded him as goonda by way of passing the impugned order and therefore, the impugned order passed by the second respondent is not liable to be quashed.

5. Learned counsel appearing for the petitioner has raised the following points for quashing the Detention Order dated 28.09.2016 :

- i. The Detention Order in question has been passed on 28.09.2016, wherein, the bail application filed by the detainee both in ground as well as in adverse cases have been dismissed on 29.08.2016 and during the interregnum period, no bail application has been filed. The Detaining Authority has not applied his mind properly.
- ii. In the remand order, in English version, it has been specifically stated to the effect that the legal right of the detainee has been explained. But, in its translated Tamil, no such words are found place.

iii. The detainee has been remanded on two occasions and subsequently, not produced before the concerned Court, but the Detaining Authority, without applying his mind has stated in the Detention Order that periodically his remand has been extended.

6. Learned Additional Public Prosecutor has also equally contended to the effect that in the instant case, the Detaining Authority after deriving satisfaction to the effect that the detainee is a habitual property offender has rightly invoked Act 14 of 1982 and therefore, branded him as goonda and further, proper translation copies have been furnished to the detainee and there is no lapse on the part of the Detaining Authority and in such circumstance, the present petition deserves to be dismissed.

7. It is true that the Detention Order has been passed on 28.09.2016, whereas the last bail application has been dismissed on 29.08.2016, but during the interregnum period, the detainee has not filed any bail application. However, the Court can easily discern that the petitioner is in the habit of filing bail application. Therefore, the first ground on the side of the petitioner cannot be a ground to quash the Detention Order.

8. The second ground urged on the side of the petitioner is that in the remand order, it has been specifically stated that the legal right of the detainee has been explained. Whereas, in its Tamil translation, no such words are found place. In fact, this Court has perused both the English and Tamil version and ultimately, found that Tamil translation is not identical to English version. Therefore, the second ground urged on the side of the petitioner can be a basis for quashing the Detention Order.

9. As per third ground on the side of the petitioner is that in all cases, the detainee has been remanded twice and subsequently, not produced before the concerned Court. But, the Detaining Authority has stated in the Detention Order that periodically, the detainee has been produced and remanded to custody. As rightly pointed out on the side of the petitioner, the detainee has been remanded twice and subsequently, not produced before the concerned Court. But, the Detaining Authority in the Detention Order has mechanically stated that the detainee has been periodically produced and his remand has been extended. Therefore, it goes without saying that the Detaining Authority without applying his mind properly has passed the Detention Order in question.

10. Since the Detaining Authority has not applied his mind properly in vital aspects, this Court is of the view that the Detention Order in question is liable to be quashed.

11. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 28.09.2016 passed in memo No.1085/BCDFGISSSV/2016 against the detainee by name, Appu @ Janda @ Udayanithi by the second respondent is quashed. The detainee is set at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

- 1.The Secretary to Government,
Home Prohibition and Excise Department,
Fort St. George,
Chennai-9.
- 2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-7.
- 3.The Joint Secretary to Government,
Public (Law & Order),
Fort st.George,
Chennai.
- 4.The Superintendent,
The Central Prison,
Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

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SVI (CO)
NR 03/07/2017

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