

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2017

CORAM

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

H.C.P.No.2413 of 2016

K.Kaliyammal ... Petitioner /Cousin of the Detenue

Vs

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

2.The District Collector &
District Magistrate
Salem District
Salem

... 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 Detention passed by the 2nd respondent dated 05.10.2016 passed in C.M.P.No.30/GOONDA/C2/2016 against the detenu Kumar @ Vijayakumar, male aged 27 years, S/o.Subramani, who is confined at Central Prison, Salem and set aside the same and 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 records relating to the detention order passed in

C.M.P.No.30/GOONDA/C2/2016 dated 05.10.2016 by the Detaining Authority against the detenu by name, Kumar @ Vijayakumar, aged 27 years, S/o.Subramani, residing at Anna Nagar, Karikkattampalayam, Rajappalayam Village, Attayampatty Police Station Limits, Salem District and quash the same.

2. The Inspector of Police, Edappady 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) Attayampatty Police Station, Crime No.207 of 2015, registered under Section 302 of Indian Penal Code;
- ii) Edappady Police Station, Crime No.264 of 2016, registered under Sections 457 and 380 of Indian Penal Code;
- iii) Mac Donald Choultry Police Station, Crime No.318 of 2016, registered under Sections 392 and 397 of Indian Penal Code.

3. Further it is averred in the affidavit that on 05.08.2016, one Ranganathan, aged 57 years, S/o.Paramasivam, as de facto complainant, has lodged a complaint against the detenu wherein it is alleged that in the place of occurrence, the detenu has forcibly taken away a sum of Rs.4850/- from the pocket of the defacto complainant by showing a deadly weapon and also created panic in the minds of the general public. Under such circumstance, a case has been registered in Crime No.290/2016 under Sections 392 r/w. 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 perusing 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. Despite repeated adjournments, counter has not been filed. Under such circumstance, this Habeas Corpus Petition is disposed of on merits on the basis of available material records.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, two representations are submitted and the same have not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. Learned Additional Public Prosecutor has contended that the representations submitted on the side of the detenu are duly disposed of without delay and under said circumstances, the

contention urged on the side of the petitioner is liable to be rejected.

8. On the side of the respondents, a proforma has been submitted, wherein it has been clearly stated that in respect of first representation, in between column Nos.7 and 9, twenty four clear working days are available and in between column Nos.12 and 13, eight clear working days are available. Likewise, in respect of second representation, in between column Nos.7 and 9, twenty four clear working days are available and in between column Nos.12 and 13, eight 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.

9. In fine, this petition is allowed. The Detention Order dated 05.10.2016 passed in C.M.P.No.30/GOONDA/C2/2016 by the Detaining Authority against the detenu by name, Kumar @ Vijayakumar, aged 27 years, S/o.Subramani, residing at Anna Nagar, Karikkattampalayam, Rajappalayam Village, Attayampatty Police Station Limits, Salem 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 (CS V)

/true copy/

Sub Asst. Registrar

gpa

To

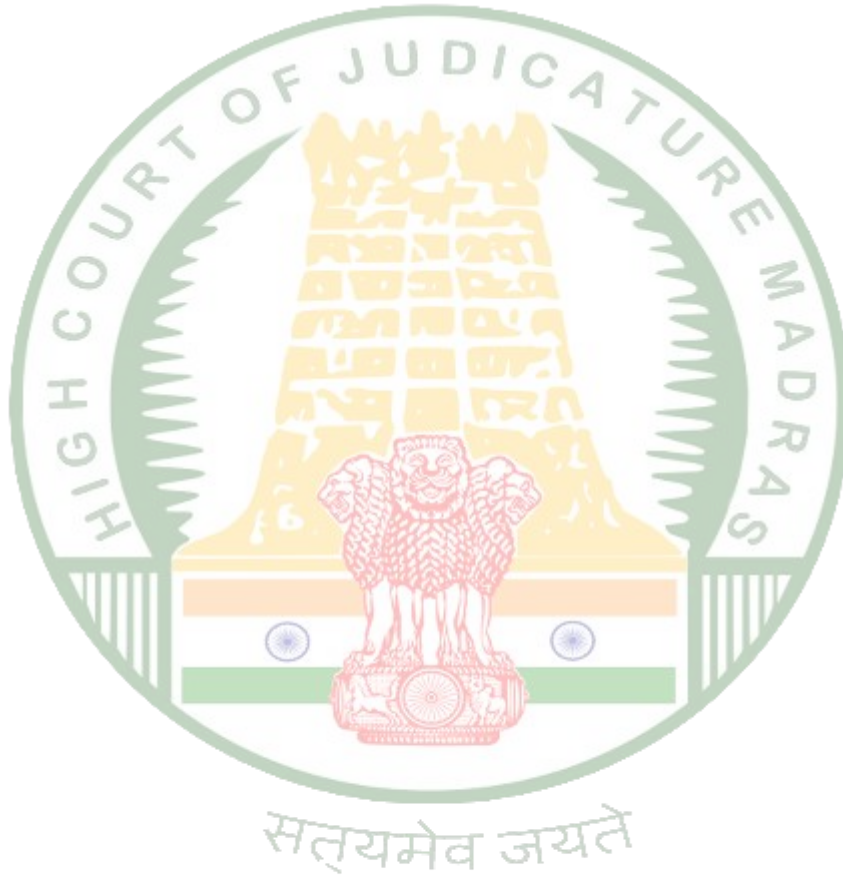
1. The Secretary to Government,
Home Prohibition and Excise Department,
Secretariat, Fort St. George
Chennai-9.
2. The Joint Secretary to Government of Tamil Nadu,
Public [Law and Order] Department,
Secretariat, Chennai-9.
3. The District Collector &
District Magistrate
Salem District
Salem

4. The Superintendent
Central Prison, Salem

5. The Public Prosecutor,
High Court, Madras.

H.C.P.No.2413 of 2016

NRI (CO)
NR 17/08/2017



WEB COPY