

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.08.2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.2428 of 2016

Manjula

.... Petitioner

vs.

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

2.The District Magistrate and
District Collector,
Salem District.

3.The Superintendent,
Central Prison,
Salem

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records leading to the detention of petitioner's husband Selvam @ Selvakumar, aged 41 years, son of Kuppan, presently detained in Central Prison, Salem, under Act 14 of 1982, as a 'Goonda', vide the detention order dated 17.10.2016 in C.M.P.No.40/Goonda/C2/2016, directing to produce body or the person of the detenu, before this Court and thereafter set him at liberty from the Central Prison, Salem, by setting aside the above order.

For Petitioner : Mr.B.Vasudevan

For Respondents : Mr.V.M.R.Rajentran, Addl.P.P.

ORDER

(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 detention order passed in

C.M.P.No.40/GOONDA/C2/2016, dated 17.10.2016, by the detaining authority against the detenu, by name Selvam @ Selvakumar, aged 41 years, S/o Kuppan, residing at Maruthaiyankadu, Mayilappatty, Yercaud, Yercaud Taluk, Salem District and quash the same.

2. The Inspector of Police, Yercaud 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. Yercaud Police Station, Cr.No.289 of 2015, registered under Sections 392 of the Indian Penal Code, altered into Section 395 read with 397 of the Indian Penal Code.
- ii. Yercaud Police Station, Cr.No.49 of 2016, registered under Sections 457, 380 of the Indian Penal Code altered into 395 of the Indian Penal Code.
- iii. Yercaud Police Station, Cr.No.53/2016, registered under Sections 392 of the Indian Penal Code altered into 395 read with Section 397 of the Indian Penal Code.

3. Further, it is averred in the affidavit that on 01.09.2016, one Jayakumar, aged 41 years, son of Angamuthu, residing at Jerinakadu, Yercaud, as defacto complainant, has given a complaint against the detenu, wherein it is alleged to the effect that in the place of occurrence, the detenu and others have forcibly taken away a sum of Rs.1,100/- and also a wrist watch, from the defacto complainant, by showing deadly weapons and consequently a case has been registered in Crime No.131 of 2016 under Sections 341, 392 read with Section 397 of the 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 documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as a '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.

5. In spite of repeated adjournments, on the side of the respondents, counter has not been filed. Under such circumstances, this Court is inclined to dispose of this petition on the basis of available records.

6. The learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, two

representations have been submitted and the same have not been disposed of without delay and therefore, the detention order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondents has contended that the representations submitted by the detenu have already been disposed of without delay and therefore, 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 is clearly stated that in respect of first representation, in between Column Nos.7 to 9, six clear working days are available and in between Column Nos.12 and 13, eighteen clear working days are available; likewise, in respect of the second representation, in between Column Nos.12 and 13 eighteen 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.

In fine, this Habeas Corpus Petition is allowed. The detention order dated 17.10.2016, passed in C.M.P.No.40/GOONDA/C2/2016 by the detaining authority against the detenu, by name Selvam @ Selvakumar, aged 41 years, S/o Kuppan, residing at Maruthaiyankadu, Mayilappatty, Yercaud, Yercaud Taluk, Salem District, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

Sd/-
Asst.Registrar (CS II)

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

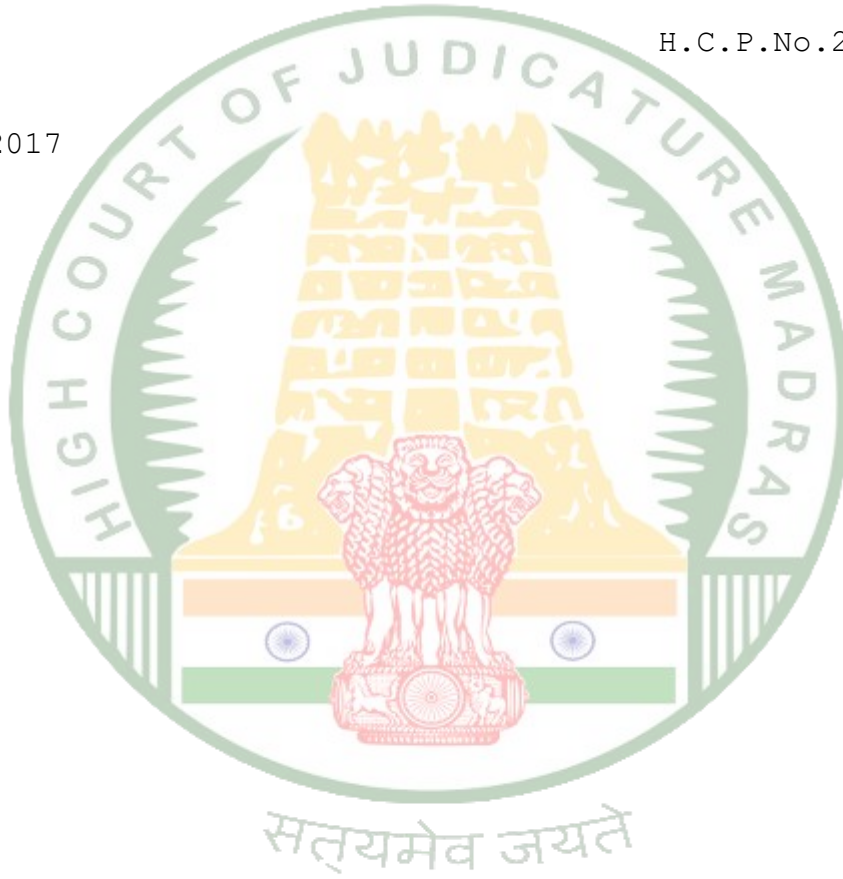
To

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, Fort St.George, Chennai-9.

3. The District Magistrate and
District Collector,
Salem District.
4. The Superintendent,
Central Prison,
Salem.
5. The Public Prosecutor,
High Court, Madras

H.C.P.No.2428 of 2016

MV (CO)
NR 16/08/2017



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