

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **31-07-2017**

CORAM:

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

H.C.P.No.2434 of 2016

A.Lavanya

.... Petitioner

vs.

1.The State of Tamil Nadu,
rep.by its Secretary to Govt.,
Home, Prohibition & Excise Dept.,
Fort George,
Chennai-600 009.

2.The District Collector and
District Magistrate,
Salem District

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records relating to the detention order passed in C.M.P.No.27/Goondas/C2/2016, dated 12.09.2016, quash the same as illegal and consequently direct the respondents to produce the detenu Ashok Kumar @ Ashok, son of Arunachalam, aged about 30 years, who is now confined at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.M.S.Sivakumar

For Respondents : Mr.V.M.R.Rajentren, 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.27/Goonda/C2/2016, dated 12.09.2016, by the detaining authority, who has been arrayed as the second respondent herein, against the detenu, by name Ashokkumar @ Ashok, aged 30 years, son of Arunachalam, residing at M.Perumapalayam, Mettuppatty, Valappady Taluk, Salem District and quash the same.

2. The Inspector of Police, Attur 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 case:

(1)Valappady Police Station Crime No.22 of 2012, under Sections 147, 148, 294(b), 353, 323, 324 r/w.149 of the Indian Penal Code and Sec.4 of Tamil Nadu Prohibition of Harassment of Women Act, 1988, read with Sections, 149, 392 and 3(1) of Tamil Nadu Properties (Prevention of Damage and Loss) Act, 1992.

(2)Karippatty Police Station Crime No.224 of 2014, under Sections 147, 148, 324, 354, 294(b), 323 of the Indian Penal Code and Section 3(1) of Tamil Nadu Properties (Prevention of Damages and Loss) Act, 1992 and Section 307 of the Indian Penal Code.

(3)Karippatty Police Station Crime No.225 of

2014, under Sections 147, 148, 294(b), 307, 435 of the Indian Penal Code and Section 25(1-A) of Arms Act.

3. Further, it is averred in the affidavit that on 22.07.2016, one Rajkumar, son of Thiyagarajan, residing at Alagapuram, Salem, as defacto complainant, has given a complaint against the detenu, to the Sub-Inspector of Police, Attur Police Station, wherein it is averred that the detenu and others have abducted the victim for getting ransom and the same has been registered in Crime No.401 of 2016, under Sections 364(A) and 343 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.Even though several adjournments have been granted for filing counter, on the side of the respondents counter has not been filed. Under such circumstances, this habeas corpus petition is

disposed of on merits on the basis of available materials on record.

6.The learned counsel appearing for the petitioner has contended to the effect that in ground case registered in Crime No.401 of 2016, under Sections 364(A) and 343 of the Indian Penal Code, the detenu and others have been arrested on 04.08.2016. But the factum of arrest has not been informed either to the close relatives or friends of the detenu and the same would affect his rights. Under the said circumstances, the detention order in question is liable to be quashed.

7.Per contra, the learned Additional Public Prosecutor has represented that the factum of arrest made in the ground case has been duly informed to the counsel for the detenu and that itself would be sufficient and further nothing has prejudiced the detenu and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

8.It is an admitted fact that on 4.08.2016, the detenu and others have been arrested in connection with the ground case registered in Crime No.401 of 2016, Attur Police station, under Sections 364(A) and 343 of the Indian Penal Code.

9.As rightly pointed out on the side of the petitioner, the

factum of arrest of the detenu in the ground case has not been duly informed either to the close relatives or friends of the detenu. But in the book-let it is seen that the factum of arrest has been informed to one counsel over cellphone and the same would not be sufficient.

10.The main gravamen expressed on the side of the petitioner is that the factum of arrest of the detenu in the ground case was not at all informed to his close relatives or friends. As mentioned supra, the sponsoring authority has not duly informed the factum of arrest of the detenu, as pointed out on the side of the petitioner 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 12.09.2016, passed in C.M.P.No.27/GOONDA/C2/2016, by the detaining authority against the detenu, by name Ashokkumar @ Ashok, aged 30 years, son of Arunachalam, 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.

(A.S.J.) (P.K.J.)
31.07.2017

msk

To

- 1.The Secretary to Govt.,
Home, Prohibition & Excise Dept.,
Fort George,
Chennai-600 009.
- 2.The District Collector and
District Magistrate,
Salem District
- 3.The Superintendent of Police,
Central Prison, Salem.
- 4.The Public Prosecutor,
High Court, Madras

A.SELVAM,J.
AND
P.KALAIYARASAN,J.

msk

H.C.P.No.2434 of 2016

31.07.2017