

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.07.2017

CORAM

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

H.C.P.No.2445 of 2016

V.Kolanchi

:: Petitioner

Vs

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

2.The District Collector and 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 records of the 2nd respondent in C.M.P.No.38/GOONDA/C2/2016 dated 17.10.2016 and quash the same thereby direct the detenu Maruthaimani, aged 25 years, S/o.Venkatachalam detained in Central Prison, Salem to be produced before this Hon'ble Court and set the detenu at liberty.

For Petitioner : Mr.V.Jeevagiridharan
for Mr.P.S.Kothandaraman
For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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 records relating to the Detention Order passed in C.M.P.No.38/GOONDA/C2/2016 dated 17.10.2016 by the Detaining Authority against the detenu by name, Maruthaimani, aged 25 years, S/o.Venkatachalam, residing at Chokkanathapuram, Malliakarai, Attur Taluk, Salem District and quash the same.

2. The Inspector of Police, Gangavalli Police Station as Sponsoring Authority has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that on 16.08.2016 at 15.00 hrs, one Murugan, Manager of M/s.Muthoot Mini Finance Limited, Gangavalli Branch, as de facto complainant has given a complaint in Gangavalli Police Station, wherein, it is stated that the detenu has stolen some jewels from M/s.Muthoot Mini Finance Limited, Gangavalli Branch and consequently, a case has been registered in Crime No.239/2016 under Sections 457 and 380 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 gravity of offence alleged to have been committed by the detenu, 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.

4. Even though several adjournments have been given for filing counter on the side of the respondents, counter has not been filed and therefore, the present petition is disposed of on the basis of the contentions put forth on the side of the petitioner.

5. Learned counsel appearing for the petitioner has contended to the effect that on the basis of the complaint alleged to have been given by the de facto complainant, a case has been registered in Crime No.239/2016 under Sections 457 and 380 of Indian Penal Code. The offences alleged to have been committed by the detenu would not affect the public peace and tranquility and also order and the detaining authority without considering the said vital aspects has erroneously passed the impugned Detention Order and therefore, the same is liable to be quashed.

6. Learned Additional Public Prosecutor has contended that since the detenu has committed offences punishable under Sections 457 and 380 of Indian Penal Code, the same would affect the public peace and tranquillity and also order. Under such circumstances, the detaining authority has rightly passed the impugned Detention Order and therefore, the same does not require any interference.

7. For the purpose of analysing the points raised on the side of the petitioner, it would be more useful to look into Section 2[iii] of the Tamil Nadu Act 14 of 1982, wherein, it is clearly stated that the offence of theft would not affect public tranquillity and peace.

8. In the instant case, the entire occurrence has taken place inside M/s.Muthoot Mini Finance Limited, Gangavalli Branch. Since, the entire occurrence has taken place inside the said branch, the Court cannot come to a conclusion that the offence alleged to have been committed by the detenu would affect public peace and tranquillity and also order.

9. The detaining authority without considering the above said vital aspect has mechanically passed the impugned Detention Order and therefore, the same is liable to be quashed.

10. In fine, this petition is allowed. The Detention Order dated 17.10.2016 passed in C.M.P.No.38/GOONDA/C2/2016 by the Detaining Authority against the detenu by name, Maruthaimani, aged 25 years, S/o.Venkatachalam, is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

[A.S., J.]

[P.K., J.]

27.07.2017

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To

1.The Secretary,
Government of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

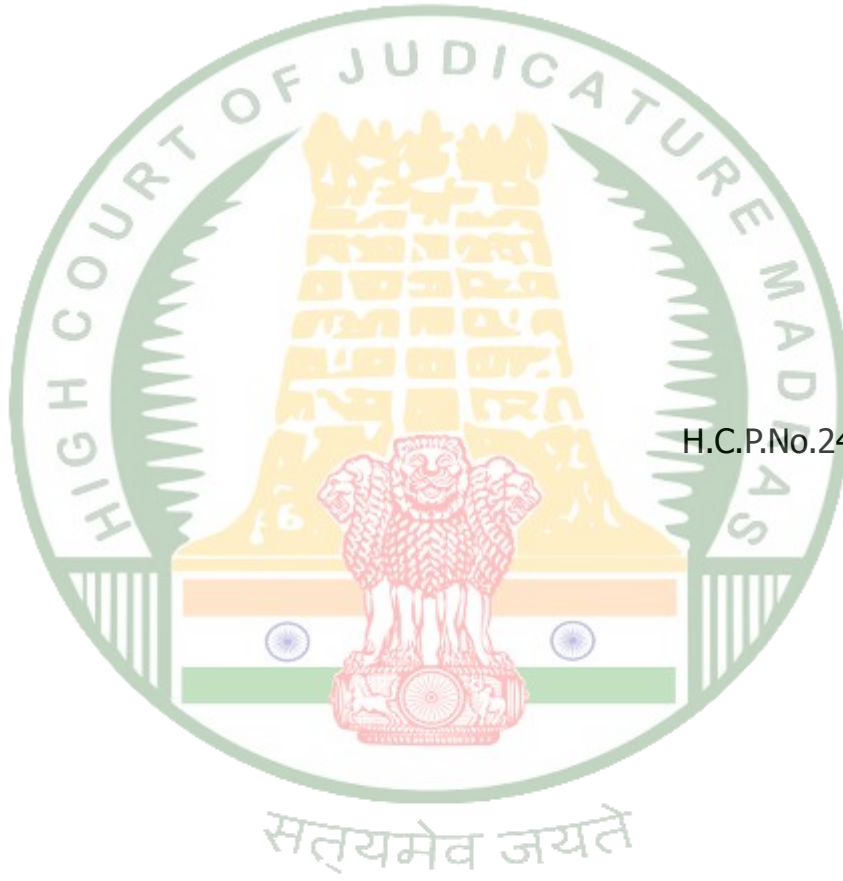
2.The District Collector and District Magistrate,
Salem District, Salem.

3.The Public Prosecutor,
High Court, Madras.

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A.SELVAM, J.
and
P.KALAIYARASAN, J.

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