

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.07.2017

CORAM

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

H.C.P.No.2459 of 2016

Adhiyammal

.. Petitioner

Vs

1.The Secretary to Government of Tamil Nadu,
Prohibition and Excise Department [Home],
Secretariat, Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Commissioner Office-Greater Chennai,
Vepery, Chennai-7.

3.The Inspector of Police,
K-10, Koyambedu Police Station,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records in Memo No.1105/BDFGISSSV/2016 dated 26.10.2016 passed by the 2nd respondent and quash the same as illegal and consequently direct the respondents to produce the detainee son Satheesh, aged 35 years, S/o.Arumugam, Hindu, has been detained under Act 14 of 1982 as Goonda, who is now confined at Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.J.Milton Arul Rajendran
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 No.1105/BDFGISSSV/2016 dated 26.10.2016 by the Detaining Authority against the detenu by name, Satheesh, aged 35 years, S/o.Arumugam, residing at No.3/313, Perumal Koil Street, 2nd Street, Nerkundram, Chennai-107 and quash the same.

2. The Inspector of Police, K-10, Koyambedu 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. K-10, Koyambedu Police Station Crime No.761/2015 registered under Section 379 of Indian Penal Code.
- ii. K-10, Koyambedu Police Station Crime No.905/2015 registered under Sections 454 and 380 of Indian Penal Code.
- iii. K-10, Koyambedu Police Station Crime No.446/2016 registered under Section 341, 392 and 506[ii] of Indian Penal Code.

3. Further, it is averred in the affidavit that on 29.09.2016, one Mahesh, S/o.Dharmalingam, residing at No.19, 2nd Main Road, Jayaram Nagar, Chennai-107, has given a complaint in K-10, Koyambedu Police Station, wherein, it is alleged to the effect that on the date of occurrence, the detenu has wrongfully restrained him and forcibly snatched a sum of Rs.1,200/- and also threatened him and consequently, a case has been registered in Crime No.1017/2016 under Sections 341, 294[b], 336, 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 considering the averments made in the affidavit and other connected documents, has arrived at a subjective satisfaction 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. In the counter filed on the side of the respondents, it is averred that most of the averments made in the petition are false. The Sponsoring Authority has supplied all the relevant

materials to the Detaining Authority. The Detaining Authority after considering all the materials, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and rightly branded the detenu as goonda by way of passing the impugned Detention Order and the same is not liable to be quashed and altogether the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has raised the following points :

- i. In the Detention Order, three adverse cases have been mentioned, but the details of the same have not been furnished.
- ii. Even though the Detention Order has been passed on 26.10.2016, a copy of the same has been served to the detenu on 04.11.2016 and the same could affect the rights of the detenu.

7. Per contra, the learned Additional Public Prosecutor has represented to the effect that in the Detention Order, the details of all adverse cases have been clearly mentioned and further, the Detention Order has been duly served to the detenu on 04.11.2016 and no prejudice would be caused to the detenu and therefore, the contention urged on the side of the petitioner is liable to be rejected.

8. It is seen from the records that the detenu has already involved in three adverse cases. In the Detention Order, the gist of each adverse case has been clearly mentioned. Since the gist of each adverse case has been clearly mentioned in the Detention Order, the first point urged on the side of the petitioner cannot be accepted.

9. The second point raised on the side of the petitioner is that the Detention Order in question has been passed on 26.10.2016, whereas a copy of the same has been given to the detenu on 04.11.2016 and the same would affect the rights of the detenu.

10. It is seen from the records that the Detention Order in question has been passed on 26.10.2016, whereas a copy of the same has been served on 04.11.2016. As per provision of Section 8[1] of the Act 14 of 1982, a copy of the Detention Order should be served as early as possible, preferably within five days. In the instant case, the Detention Order passed on 26.10.2016, whereas a copy of the same has been given on 04.11.2016. During the interregnum period, 8 clear days are available and no explanation has been given on the side of the respondents and the same would affect the rights of the detenu guaranteed under Article 22[5] of the Constitution of India. On that ground alone, the Detention Order in question is liable to be quashed.

11. In fine, this petition is allowed. The Detention Order dated 26.10.2016 passed in No.1105/BDFGISSSV/2016 by the Detaining Authority against the detenu by name, Satheesh, aged 35 years, S/o.Arumugam, residing at No.3/313, Perumal Koil Street, 2nd Street, Nerkundram, Chennai-107 is quashed and directed to set him at liberty forthwith, unless he is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government of Tamil Nadu,
Prohibition and Excise Department [Home],
Secretariat, Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Commissioner Office-Greater Chennai,
Vepery, Chennai-7.

3. The Joint Secretary
Public Law and Order Fort St.George
Chennai-9

4.The Inspector of Police,
K-10, Koyambedu Police Station,
Chennai.

5. The Superintendent of Central Prison
Puzhal Chennai

6.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2459 of 2016

pvs(co)
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