

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2017

CORAM

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

H.C.P.No.2490 of 2016

Govindammal

... Petitioner

Vs

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

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-3.

... 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 detention order passed in No.1067/BCDFGISSSV/2016 dated 20.09.2016 on the file of the 2nd respondent herein and set aside the same and direct the respondents to produce the body of Balaji, aged 25 years, S/o.Ramesh @ Ganja Ramesh, the detenu herein now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.C.M.Gunasekaran for
Mr.M.Anandaraaj

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.1067/BCDFGISSSV/2016 dated 20.09.2016 by the Detaining Authority against the detenu by name, Balaji, aged 25 years, S/o.Ramesh @ Ganja Ramesh, residing at No.93, Muthaiah Thotta Street, Royapettah, Chennai-14 and quash the same.

2. The Inspector of Police, D-3 Ice House 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. D-3 Ice House Police Station Crime No.891/2015 registered under Sections 294[b], 323 and 506[ii] of Indian Penal Code.
- ii. D-3 Ice House Police Station Crime No.2430/2015 registered under Sections 147, 148, 294[b], 341, 324, 307 and 506[ii] of Indian Penal Code.
- iii. D-3 Ice House Police Station Crime No.2441/2015 registered under Sections 324 and 307 of Indian Penal Code.
- iv. D-3 Ice House Police Station Crime No.174/2016 registered under Section 379 of Indian Penal Code.
- v. E-1 Mylapore Police Station Crime No.1086/2016 registered under Section 379 of Indian Penal Code.

3. Further, it is averred in the affidavit that on 14.08.2016, one Abdul Sameethu, S/o.Abbas, residing at No.37, Muthaiah Mint Street, Royapettah, Chennai-14, as de facto complainant has given a complaint against the detenu, wherein, it is alleged in the place of occurrence, the detenu has scolded the de facto complainant by using filthy words and also attacked him. Consequently, a case has been registered in Crime No.1217/2016 under Sections 341, 294[b], 324, 336, 427, 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. On the side of the respondents, a counter has been filed, wherein, it is contended inter alia to the effect that most of the averments made in the affidavit are false. The Sponsoring Authority has supplied all the relevant documents to the Detaining Authority. The Detaining Authority after considering the averments made in the affidavit and other connected documents, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and rightly, passed the impugned Detention Order and the same need not be quashed and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that the Detaining Authority has supplied all material papers in the form of booklet, wherein, most of the vital documents are not readable. Under such circumstances, the detenu is not able to make an effective representation and it would itself sufficient to quash the Detention Order.

7. Learned Additional Public Prosecutor has submitted to the effect that almost all the documents are readable and at such circumstances, the detenu can make his representation easily and therefore, the present petition deserves to be dismissed.

8. On the basis of the divergent submissions made on either side, this Court has perused the entire booklet and most of the vital documents are not readable. Since, most of the documents are not readable, this Court is of the considered view that the detenu has not been able to make any representation and that itself 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 20.09.2016 passed in No.1067/BCDFGISSSV/2016 by the Detaining Authority against the detenu by name, Balaji, aged 25 years, S/o.Ramesh @ Ganja Ramesh, residing at No.93, Muthaiah Thotta Street, Royapettah, Chennai-14 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 VII)

/true copy/

Sub Asst. Registrar

gya

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-3.

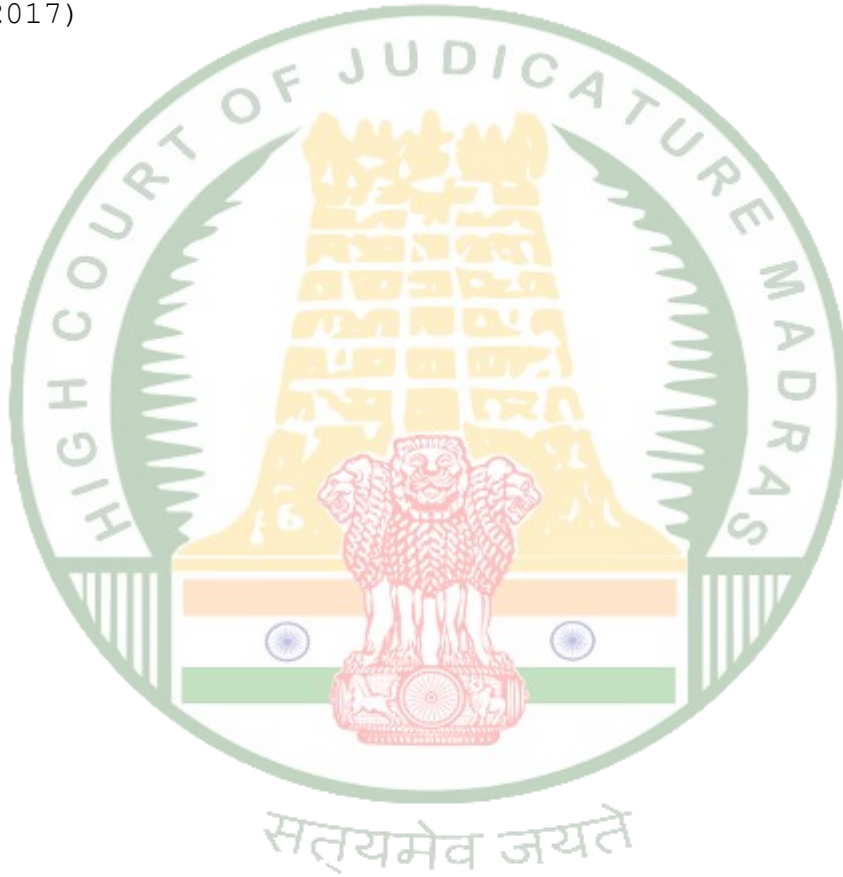
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3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent of Police,
Central Prison, Puzhal,
Chennai.

H.C.P.No.2490 of 2016

SJ(CO)
VR(17/07/2017)



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