

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2017

CORAM

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

H.C.P.No.2521 of 2016

Thangamani

.. Petitioner /
Son of the Detenue

Vs

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

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

.. 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 connection with the detention order passed by the 2nd respondent in No.1099/BCDFGISSSV/ 2016 dated 04.10.2016 against the petitioner's mother, the detenue herein, now confined at Special Prison for Women, Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenue Tmt.Anjalai, aged 39 years, W/o.Anandan before this Hon'ble Court and set her at liberty.

For Petitioner : Mr.A.Nirmal Kumar
For Respondents : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

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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.1099/BCDFGISSSV/2016 dated 04.10.2016 by the Detaining Authority against the detenue by name, Anjalai, aged 39 years,

W/o.Anandan, residing at No.333, 5th Street, Dhamodharan Nagar, Vyasarpadi, Chennai-39 and quash the same.

2. The Inspector of Police, P-5, M.K.B. Nagar Police Station as Sponsoring Authority has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that the detainee has involved in the following adverse cases :

- i. P-5 M.K.B. Nagar Police Station Crime No.108/2016 registered under Sections 8[c] r/w 20[b] of NDPS Act.
- ii. P-5 M.K.B. Nagar Police Station Crime No.534/2016 registered under Sections 8[c] r/w 20[b] of NDPS Act.

3. Further, it is averred in the affidavit that on 15.08.2016, the Sub Inspector of Police has received a confidential information, after getting appropriate permission from the Inspector of Police, the Sub Inspector of Police and others reach the spot and ultimately, found that the detainee is in possession of 2.200 grams of ganja without having licence and after observing the formalities, the same has been seized and consequently, a case has been registered in Crime No.875/2016 under Sections 8[c] r/w 20[b][ii][A] of NDPS Act and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detainee.

4. The Detaining Authority after considering the averments made in the affidavit and other connected documents, has arrived at a subjective satisfaction that the detainee is a habitual offender and ultimately, branded her as drug offender by way of passing the impugned Detention Order and in order to quash the same, the present petition has been filed by the son of the detainee as petitioner.

5. On the side of the respondents, a counter has been filed, wherein, it has been contended to the effect 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 relevant materials, has arrived at a subjective satisfaction to the effect that the detainee is a habitual offender and ultimately, passed the impugned Detention Order and the same does not require any interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that on the side of the petitioner a representation has been submitted to the concerned authorities. But, the same has not been disposed of without delay and therefore, the Detention Order in question is liable to be quashed.

7. Learned Additional Public Prosecutor has contended that the representation given by the petitioner has 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 has been clearly stated that in between column Nos.7 and 9, 7 clear working days are available. Likewise, in between column Nos.12 and 13, 8 clear working days are available and no explanation has been given on the side of the respondents, with regard to such huge delay and the same would affect the rights of the detinue 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 04.10.2016 passed in No.1099/BCDFGISSSV/2016 by the Detaining Authority against the detinue by name, Anjalai, aged 39 years, W/o.Anandan, residing at No.333, 5th Street, Dhamodharan Nagar, Vyasarpadi, Chennai-39 is quashed and directed to set her at liberty forthwith, unless she is required to be incarcerated in any other case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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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-7.

3.The Superintendent
Special Prison for Women
Central Prison
Puzhal Chennai

4.The Joint Secretary to Government
Public Law and Order Fort St.George
Chennai

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2521 of 2016

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