

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2017

CORAM

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

H.C.P.No.2534 of 2016

B.Shanthi ... Petitioner

Vs

1.The State rep. by
The Commissioner of Police,
Egmore,
Chennai-8.

2.The Secretary to Government [Home],
Prohibition and Excise Department,
Secretariat,
Chennai-9.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to direct the respondents to produce the body of Babu @ Suresh Babu, aged 31 years, S/o.Dilli, is detained at Central Prison, Puzhal before this Hon'ble Court, call for the records of detention order passed by the 1st respondent vide Memo No.1136/BCDFGISSSV/2016 dated 03.11.2016, set aside the same and set the detenu Babu @ Suresh Babu at liberty.

For Petitioner : Mr.K.Arun Prasad

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.1136/BCDFGISSSV/2016 dated 03.11.2016 by the Detaining

Authority against the detenu by name, Babu @ Suresh Babu, aged 31 years, S/o.Dilli and quash the same.

2. The Inspector of Police, K-1 Sembium 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-1 Sembium Police Station Crime No.72/2016 registered under Section 379 of Indian Penal Code.
- ii. K-5 Peravallore Police Station Crime No.206/2016 registered under Section 379 of Indian Penal Code.
- iii. K-1 Sembium Police Station Crime No.760/2016 registered under Section 379 of Indian Penal Code.

3. Further, it is averred in the affidavit that on 03.09.2016, one Sekar, S/o.Karuppusamy, as de facto complainant has given a complaint in K-1 Sembium Police Station, wherein, it is stated to the effect that in the place of occurrence, the detenu and another have threatened and snatched a sum of Rs.400/- and also a cell phone from the de facto complainant. Further, they created a panic in the minds of the general public and consequently, a case has been registered in Crime No.960/2016 under Sections 341, 336, 294[b], 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 to the effect 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 wife of the detenu as petitioner.

5. In the counter filed on the side of the respondents, it is averred to the effect that most of the averments made in the petition are false. The Sponsoring Authority has submitted all the relevant materials to the Detaining Authority. The Detaining Authority after perusing all the relevant materials and other connected papers has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender and rightly branded him as goonda by way of passing the impugned Detention Order and altogether, the present petition deserves to be dismissed.

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

- i. The Detention Order in question has been passed on 03.11.2016, whereas, a copy of the same has been

served to the detenu on 09.11.2016. Since the Detention Order has not been served within a period of 5 days, the same would affect the rights of the detenu.
ii. In the booklet at page No.111, copy of the First Information Report is not readable.

7. Learned Additional Public Prosecutor has also equally contended to the effect that in the instant case, on the basis of the habitual nature of the detenu and also the gravity of offence committed by him, the Detaining Authority has rightly invoked Act 14 of 1982 against the detenu by way of passing the impugned Detention Order and a copy of the same has also been served to him within the prescribed period and further, the copy of the First Information Report can easily be read and at the said circumstances, the contentions put forth on the side of the petitioner are liable to be rejected.

8. It is an admitted fact that the Detention Order has been passed on 03.11.2016, whereas, a copy of the same has been served to the detenu on 09.11.2016. It is also equally an admitted fact that a copy of the Detention Order should be served to the detenu as early as possible, preferably, within a period of five days. But, in the instant case, it is quite clear that there is delay of one day in serving the copy of the Detention Order to the detenu.

9. Coming to the second point raised on the side of the petitioner, in fact, this Court has perused page No.111 of the booklet, wherein, a copy of the First Information Report is available. As rightly pointed out on the side of the petitioner, the same is not readable. Under such circumstances, this Court is of the view that the infirmities mentioned supra 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.

10. In fine, this petition is allowed. The Detention Order dated 03.11.2016 passed in No.1136/BCDFGISSSV/2016 by the Detaining Authority against the detenu by name, Babu @ Suresh Babu, aged 31 years, S/o.Dilli 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 VIII)

/true copy/

Sub Asst. Registrar

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To

1.The Commissioner of Police,
Egmore, Chennai-8.

2.The Secretary to Government [Home],
Prohibition and Excise Department,
Secretariat, Chennai-9.

3.The Joint Secretary to Government,
Public (Law & Order)
Fort St.George, Chennai-9.

4.The Superintendent,
Central Prison, Puzhal,
Chennai.
(In duplicate for communication to the detenue)

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2534 of 2016

RR(CO)
VR(26/07/2017)



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