

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-07-2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.2540 of 2016

Mohammed Sulthan

.... Petitioner

vs.

1. State rep. by Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
2. The District Collector and District
Magistrate, Coimbatore District,
Coimbatore. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus calling for the records relating to the detenu's detention order passed by the second respondent in Cr.M.P.No.27/G/2016/E1 DATED 06.10.2016 and set aside the same and produce the detenu Mohammed Abuthahir @ Abu S/o Mohammed Sulthan, aged about 23 years, now detained in Central Prison, Coimbatore, before this Court and set him at liberty forthwith.

For Petitioner : M/s.Petricia Joany

For Respondents : Mr.V.M.R.Rajentren, APP

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 the records relating to detention order, dated 06.10.2016, passed in Cr.M.P.No.27/G/2016/E1, by the detaining authority against the detenu, by name Mohammed Abuthahir @ Abu, aged 23, S/o.Mohammed Sulthan, residing at Palaya Santhaikkadai, Sirumugai Road, Mettupalayam, Mettupalayam Taluk, Coimbatore District and quash the same.

2. The Inspector of Police, Mettupalayam Police Station, as sponsoring authority, has submitted an affidavit to the detaining authority, wherein it is averred that the detenu has involved in the following adverse cases:

- i. Erode Taluk Police Station, Cr.No.355 of 2013 registered under Section 392 of the Indian Penal Code.
- ii. Erode North Police Station, Cr.No.818 of 2013, registered under Section 392 of the Indian Penal Code.
- iii. Mettupalayam Police Station, Cr.No.526 of 2015 registered under Sections 294(b) of the Indian Penal Code and Section 3 of the Tamil Nadu Public Properties (Damages and Loss) Act, 1982.

3. Further, it is averred in the affidavit that on 09.07.2016, one Abbas, S/o.Ibrahaim, residing at Door No.27/110 (A), S.K.Samy Layout, Kattur, Mettupalayam, has given a complaint in Mettupalayam Police Station against the detenu and the same has been registered in Crime No.416 of 2016, under Sections 392 read with 397 of the 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 derived subjective satisfaction to the effect that the detenu is in the habit of committing crimes one after another and ultimately branded him as a 'Goonda' by way of passing the impugned detention order and in order to quash the same, the present petition has been filed by the father of the detenu, as petitioner.

5. On the side of the respondents, a counter has been filed, wherein it has been contended inter alia to the effect that all the averments made in the affidavit are false and the sponsoring authority has submitted all material records to the detaining authority. The detaining authority, after considering the materials placed before him, has derived subjective satisfaction that the detenu is in the habit of committing crimes one after another and ultimately, passed the impugned detention order, branding the detenu as "Goonda" and therefore, the detention order does not call for any interference and the present petition deserves to be dismissed.

6. The learned counsel appearing for the petitioner has contended that on the side of the detenu, a representation has been given and the same has not been disposed of without delay and therefore, the detention order in question is liable to be quashed.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondents has contended that the representation submitted by the detenu is duly disposed of without delay and therefore, the detention order in question need not be quashed.

8. On the side of the respondents, a proforma has been submitted, wherein it has been clearly stated that in between Column Nos.7 to 9, 14 clear working days are available and in between Column Nos.12 and 13, 25 clear working days are available. No explanation has been given on the side of the respondents with regard to the huge delay in disposing of the representation submitted on the side of the detenu and the same 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.

In fine, this Habeas Corpus Petition is allowed. The detention order dated 06.10.2016, passed in Cr.M.P.No.27/G/2016/E1, by the detaining authority against the detenu, by name Mohammed Abuthahir @ Abu, aged 23, S/o.Mohammed Sulthan, residing at Palaya Santhaikkadai, Sirumugai Road, Mettupalayam, Mettupalayam Taluk, Coimbatore District, is quashed and the respondents are directed to set him at liberty forthwith, unless he is required to be incarcerated in connection with some other case.

सत्यमेव जयते
Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

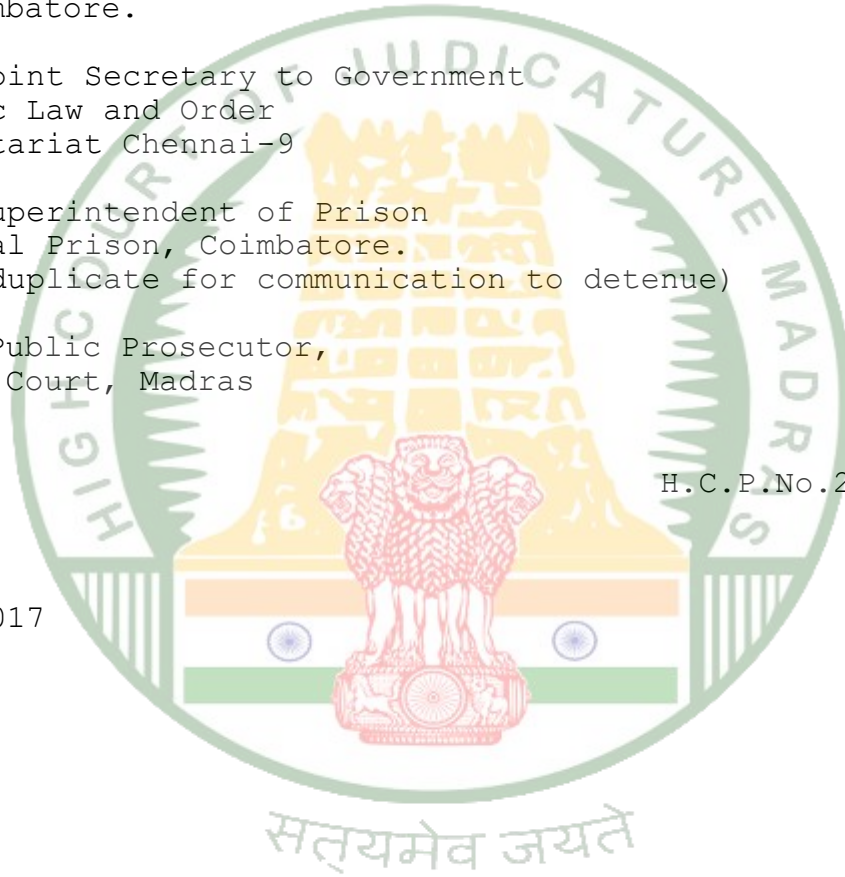
sra

To

1. The Secretary
Home, Prohibition and Excise Department,
Secretariat, Chennai 9
2. The District Collector and District
Magistrate, Coimbatore District,
Coimbatore.
3. The Joint Secretary to Government
Public Law and Order
Secretariat Chennai-9
4. The Superintendent of Prison
Central Prison, Coimbatore.
(for duplicate for communication to detenue)
5. The Public Prosecutor,
High Court, Madras

H.C.P.No.2540 of 2016

mg(co)
aa07/07/2017



WEB COPY