

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.07.2017

CORAM

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

H.C.P.No.2555 of 2016

Vasantha

.. Petitioner

Vs

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

2.The District Collector/
The District Magistrate,
Salem District, Salem.

3.The Inspector of Police,
Attayampatty Police Station,
Salem District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records relating to the impugned order of detention passed by the 2nd respondent vide CMP.No.43/GOONDA/C2/2016 dated 18.11.2016 and set aside the same and consequently direct the respondent to produce the detenu [petitioner's son] namely Jothi, aged 37 years, S/o.Dubaikarar @ Kaliyamoorthy, now confined at Central Prison, Salem, before this Hon'ble Court.

For Petitioner : Mr.S.Parthasarathy

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

CMP.No.43/GOONDA/C2/2016 dated 18.11.2016 by the Detaining Authority against the detenu by name, Jothi, aged 37 years, S/o.Dubaikarar @ Kaliyamoorthy, residing at Pillaiyar Kovil Street, Muthanampalayam Village, S.Papparappatti Post, Attaiyampatti Police Station Limit, Salem South Taluk, Salem District and quash the same.

2. The Inspector of Police, Attaiyampatti Police Station as Sponsoring Authority has submitted an affidavit to the Detaining Authority, wherein, it is averred to the effect that on 07.10.2016, one Vijayakumar, S/o.Arumugam, residing at Chettikadu, Marulaiyampalaiyam Village, Attaiyampatti Police Station Limit, as de facto complainant has given a complaint against the detenu and others, wherein, it is stated that the detenu and others in the place of occurrence have attacked the de facto complainant and others and consequently, a case has been registered in Crime No.314/2016 under Sections 147, 148, 341, 294[b], 323, 324 and 307 of Indian Penal Code and ultimately, requested the Detaining Authority to invoke Act 14 of 1982 against the detenu.

3. The Detaining Authority after considering the averments made in the affidavit and other connected documents, has arrived at a subjective satisfaction that the detenu has committed grave offence and has 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.

4. On the side of the respondents, a counter has been filed, wherein, it has been contended inter alia to the effect that most of the averments made in the petition are false. The Sponsoring Authority has supplied all the 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 has committed grave offence and ultimately, branded him as goonda by way of passing the impugned Detention Order and the same does not require any interference and therefore, the present petition deserves to be dismissed.

5. Learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, a representation has been given 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.

6. Learned Additional Public Prosecutor per contra, has contended to the effect that the representation given by the

petitioner has been duly disposed of without delay and therefore, the contention put forth on the side of the petitioner is liable to be rejected.

7. 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, 20 clear working days are available. Likewise, in between column Nos.12 and 13, 2 clear working days are available and with regard to such delay, 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 and therefore, the Detention Order in question is liable to be quashed.

8. In fine, this petition is allowed. The Detention Order dated 18.11.2016 passed in CMP.No.43/GOONDA/C2/2016 by the Detaining Authority against the detenu by name, Jothi, aged 37 years, S/o.Dubaikarar @ Kaliyamoorthy, residing at Pillaiyar Kovil Street, Muthanampalayam Village, S.Papparappatti Post, Attaiyampatti Police Station Limit, Salem South Taluk, Salem District, 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 VI)

//True Copy//

Sub Assistant Registrar

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To

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

2.The District Collector/The District Magistrate,
Salem District, Salem.

3.The Inspector of Police,
Attayampatty Police Station,
Salem District.

4.The Public Prosecutor,
High Court, Madras.

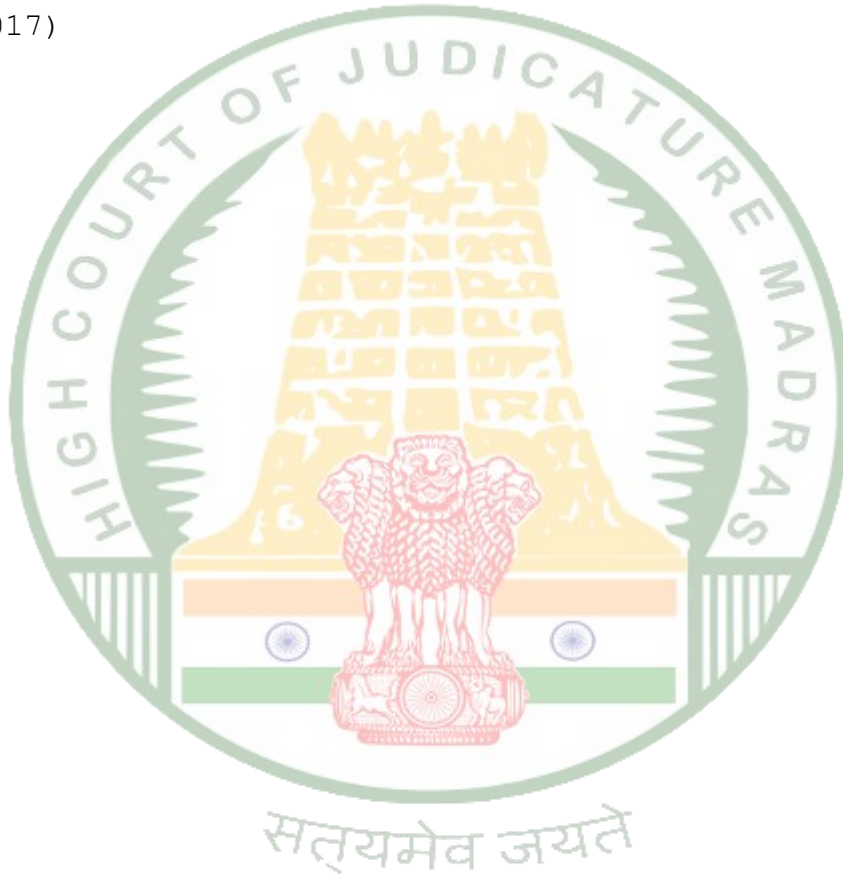
5.The Superintendent,
Central Prison, Salem.

6.The Joint Secretary to Government,
Public(L&O),Fort St.George,
Chennai-9

+lcc to M/s.S.Parthasarathy,Advocate sr.50047

H.C.P.No.2555 of 2016

mp(co)
ss(18/7/2017)



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