

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.07.2017

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

H.C.P.No.2611 of 2016

Eswari

.. Petitioner

Vs

1. The Commissioner of Police,
Greater Chennai,
Chennai City, Vepery,
Chennai-7.

2. The Secretary to the Government,
Government of Tamil Nadu [Home],
Prohibition and Excise Department,
Fort St. George,
Chennai-9.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, to call for the records of the 1st respondent herein concerned in No.1102/BCDFGISSSV/2016 dated 14.10.2016, setting aside the order of detention passed therein against the detainee by name Prabha @ Prabhakaran, S/o.Sridhar, quashing the same and setting him at liberty now detained in Central Prison, Puzhal, Chennai.

For Petitioner : Ms.R.Vinu Priyanga

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.1102/BCDFGISSSV/2016 dated 14.10.2016 by the Detaining Authority against the detenu by name, Prabha @ Prabhakaran, S/o.Sridhar and quash the same.

2. The Inspector of Police, Thiru.Vi.Ka.Nagar 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. M-1 Madhavaram Police Station Crime No.3176/2012 registered under Sections 341, 465, 302, 392 r/w 397 of Indian Penal Code.
- ii. K-1 Sembium Police Station Crime No.2679/2014 registered under Section 392 of Indian Penal Code.
- iii. K-9 Thiru.Vi.Ka.Nagar Police Station Crime No.727/2015 registered under Sections 341, 294[b], 324, 307 and 506[ii] of Indian Penal Code.

3. Further it is averred in the affidavit that on 09.08.2016, one Kamaleshkumar, S/o.Peppuram as de facto complainant has lodged a complaint against the detenu in Thiru.Vi.Ka.Nagar Police Station and the same has been registered in Crime No.592/2016 under Sections 341, 294[b], 336, 427, 392, 397 and 506[iii] 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 a satisfied conclusion that the detenu is in the habit of committing crimes one after another and ultimately, branded him as goonda by 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 detailed 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 perusing all the materials, has arrived to a subjective satisfaction to the effect that the detenu is in the habit of committing crimes and ultimately, passed the impugned Detention Order and the same does not call for any interference and therefore, the present petition deserves to be dismissed.

6. Learned counsel appearing for the petitioner has contended to the effect that the petitioner has given a representation 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 the said circumstances, the present petition deserves to be dismissed.

8. On the side of the respondents, a proforma has been submitted, wherein, it has been clearly stated that on 22.11.2016, the representation in question has been received by the concerned authorities. Further, in between column Nos.7 and 9, three clear working days are available. Likewise in between column Nos.12 and 13, eight clear working days are available and no explanation has been given on the side of the respondents.

9. Since, no explanation has been given on the side of the respondents in spite of the delay in disposal of representation, 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.

10. In fine, this petition is allowed. The Detention Order dated 14.10.2016 passed in No.1102/BCDFGISSSV/2016 by the first respondent against the detenu by name, Prabha @ Prabhakaran, S/o.Sridhar is quashed and directed the detenu to set 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 Commissioner of Police,
Greater Chennai,
Chennai City, Vepery,
Chennai-7.
2. The Secretary to the Government,
Government of Tamil Nadu [Home],
Prohibition and Excise Department,
Fort St. George,
Chennai-9.

3. The Superintendent,
Central Prison,
Puzhal, Chennai.

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

5. The Public Prosecutor,
High Court, Madras.

+1cc to Ms.R.Vinu Priyanga, Advocate, S.R.No.46629

H.C.P.No.2611 of 2016

SK(CO)
CS/06/07/17



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