

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.07.2017

CORAM

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

H.C.P.No.2638 of 2016

Ellammal

.. Petitioner

Vs

1. The District Collector and District Magistrate
Collectorate Office
Vellore

2.The State of Tamil Nadu
Rep. By its Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai - 600 009

3.The Superintendent
Central Prison
Vellore 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 in Detention Order No.C3.D.O.No.78 of 2016 dated 01.12.2016 on the file of the 1st respondent and quash the same and direct the respondents herein to produce the body of the detenu Sivan, aged 23 years, confined in Central Prison, Vellore before this Court and set him at liberty.

For Petitioner

: Mr. Ilayaraja
for Ms.S.P.Arthi

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 the records relating to the detention order passed in C3.D.O.No.78 of 2016 dated 01.12.2016, against the detenu by name, Sivan, aged 23 years, S/o.Chinnah, No.98, Koil Street, Kottai Colony, Sathkar Post, Pernambut Taluk, Vellore District and quash the same.

2. The Inspector of Police, Gudiyatham Prohibition Enforcement Wing, 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) Gudiyatham Prohibition Enforcement Wing, Crime No.449 of 2016, registered under Section 4(1) g TNP Act, 1937 (Act 10/937); and

ii) Gudiyatham Prohibition Enforcement Wing, Crime No.476 of 2016, registered under Section 4(1) g TNP Act, 1937 (Act 10/937).

3. Further, it is averred in the affidavit that on 08.11.2016, the Inspector of Police and other police personnel have made a prohibition raid and in the place of occurrence, they found the detenu in possession of illicit arrack and consequently, a case has been registered in Crime No.479 of 2016 under Sections 4(1)(i), 4(1)aaa and 4(1-A) of Tamil Nadu Prohibition Act r/w.Section 328 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, has derived a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him as "Bootlegger" 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.

5. 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 and the Sponsoring Authority has submitted all the relevant materials to the Detaining Authority and the Detaining Authority, after considering all the materials supplied to him, has derived a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, branded him as Bootlegger 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.

6. The learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu, a representation has been given, but 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 has contended that the representation submitted on the side of the detenu has been duly 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, 10 clear working days are available and no explanation has been given on the side of the respondents with regard to such delay and that the same would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India and that itself would be sufficient to quash the Detention Order in question.

9. In fine, this Habeas Corpus Petition is allowed and the Detention Order dated 01.12.2016 passed in C3.D.O.No.78/2016 by the first respondent against the detenu by name, Sivan, aged 23 years, S/o.Chinnah, residing at No.98, Koil Street, Kottai Colony, Sathkar Post, Perambut Taluk, Vellore 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 VIII)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The District Collector and District Magistrate
Collectorate Office
Vellore

2.The Secretary to Government
Home, Prohibition and Excise Department
Fort St. George
Chennai - 600 009

3.The Superintendent
Central Prison
Vellore District(In Duplicate for Communication to the Detenue)

4.The Public Prosecutor,
High Court, Madras.

5.The Joint Secretary to Government of Tamil Nadu,
Public (Law & Order) Secretariat, Chennai-9.

H.C.P.No.2638 of 2016

SKS (CO)
GN(20/07/2017)



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