

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-07-2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

H.C.P.No.2655 of 2016

Meena

.... Petitioner

vs.

1.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai-600 009

2.The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore.

3.The Inspector of Police,
Law & Order,
E-3, Saravanampatty Police Station,
Coimbatore City,
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 order of detention against the petitioner's son namely R.Balakrishnan @ Balan, S/o.Rajan in C.No.55/G/IS/2016, dated 23.11.2016, on the file of the 2nd respondent herein and quash the said order and issue a writ of habeas corpus directing the respondents herein to produce the body of petitioner son namely R.Balakrishnan @ Balan, s/o.Rajan, aged about 24 years, now confined at Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.G.Karthikeyan

For Respondents : Mr.V.M.R.Rajentren, Addl.P.P

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, passed in C.No.55/G/IS/2016, dated 23.11.2016, by the detaining authority, who has been arrayed as the second respondent herein, against the detenu, by name R.Balakrishnan @ Balan, aged 24 years, son of Rajan, residing at Door No.3/3, Athanur Mariamman Kovil Street, 'More Market', Ganapathy, Coimbatore, and quash the same.

2. The Inspector of Police, E3-Saravanampatty Police Station, Coimbatore City, as sponsoring authority, has submitted an affidavit to the detaining authority, wherein it is averred to the effect that on 18.09.2016, one K.Mohammed Faizal @ Faizal, son of Kamaludeen, residing at Door No.22/23, Krishnaraj Colony, Sidha Thottam, Ganapathy, Coimbatore, as defacto complainant, has given a complaint against the detenu and others, wherein it is stated that the detenu and others have attacked Abdul Hakkim and others by using deadly weapons and due to their overt act, the said Abdul Hakkim has passed away and consequently, a case has been registered in Crime No.580 of 2016, under Sections 147, 148, 3411, 307 and 302 of the Indian Penal Code and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

3.The detaining authority, after perusing the relevant records, has derived subjective satisfaction to the effect that the detenu has committed grave offence 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 mother of the detenu, as petitioner.

4.Even though this habeas corpus petition has been posted today finally, counter has not been filed on the side of the respondents and therefore, this petition is disposed of on merits on the basis of materials available on record.

5.The learned counsel appearing for the petitioner has contended to the effect that on the side of the detenu three representations have been submitted and the same have not been disposed of without delay and therefore, the detention order in question is liable to be quashed. Further, on the side of the detenu, no bail application has been filed.

6.The learned Additional Public Prosecutor appearing for the respondents has also equally contended to the effect that the representations submitted on the side of the detenu has been duly disposed of without delay and therefore the first contention raised on the side of the petitioner is liable to be rejected and with regard to second contention, in the detention order, filing of bail application and the order passed thereon in a similar case has also been mentioned and therefore, the second contention put forth on the side of the petitioner is also equally liable to be rejected.

7.On the side of the respondents, a proforma has been submitted, wherein it has been clinchingly stated that in respect of first representation, in between Column Nos.7 to 9, seven clear working days are available and in between Column Nos.12 and 13, thirty one clear working days are available. Likewise, in respect of second and third representations, in between Column Nos.7 to 9, eight clear working days are available and in between Column Nos.12 and 13, five clear working days are available and the said delay have not been explained on the side of the respondents. Since there is a huge delay in disposing of the representations given by the petitioner, 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.Further it is seen from the records that no bail application has been filed by the detenu in the ground case. Of course, it is true that similar case particulars have been mentioned in the detention order. Simply because similar case particulars have been mentioned in the detention order, the Court cannot come to a conclusion that the detenu has made arrangements to come out on bail and therefore, the second contention raised on the side of the detenu can also be accepted and altogether the detention order in question is liable to be quashed.

In fine this Habeas Corpus Petition is allowed. The detention order dated 23.11.2016, passed in C.No.55/G/IS/2016, by the detaining authority against the detenu, by name R.Balakrishnan @ Balan, aged 24 years, son of Rajan, 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.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msk

To

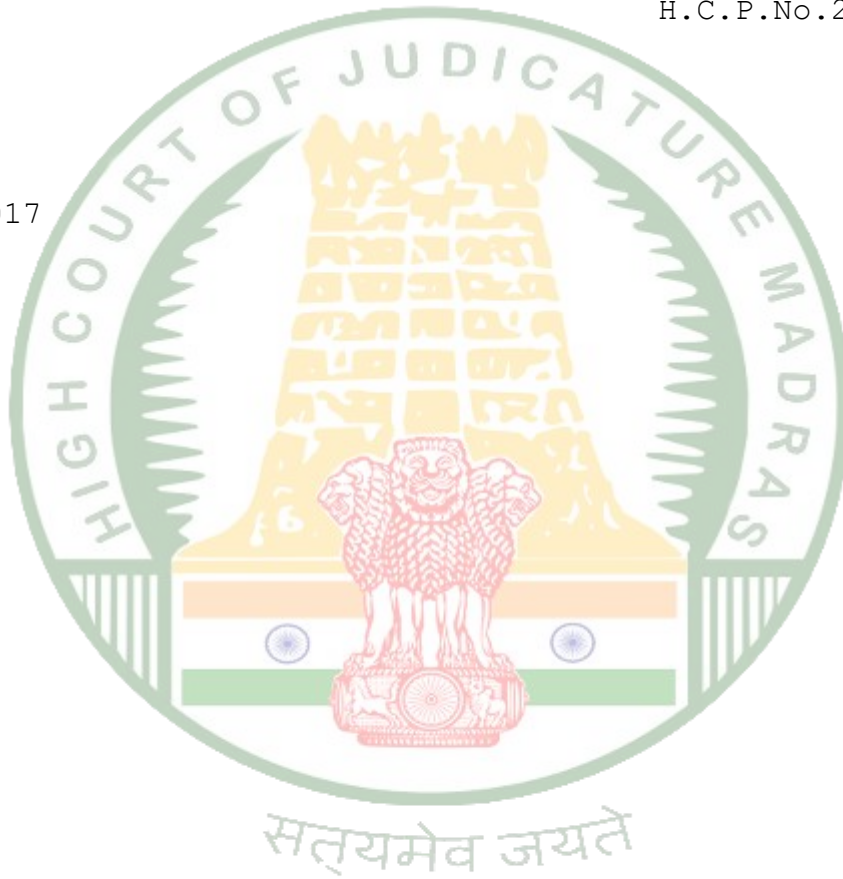
- 1.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai-600 009
- 2.The Commissioner of Police/
Detaining Authority,
Coimbatore City,
Coimbatore.
- 3.The Inspector of Police,
Law & Order,
E-3, Saravanampatty Police Station,
Coimbatore City,
Coimbatore
- 4.The Superintendent of Prisons,
Central Prison, Coimbatore.

5.The Public Prosecutor,
High Court, Madras

6. The Joint Secretary to Government
Public Law and Order Department
Secretariat Chennai-9

H.C.P.No.2655 of 2016

ariii
aa31/07/2017



WEB COPY