

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.07.2017

CORAM

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

H.C.P.No.2682 of 2016

Mukesh

... Petitioner

Vs

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

2.The Commissioner of Police  
Greater Chennai  
Vepery  
Chennai - 600 007

... 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 2nd respondent herein concerned in BCDFGISSSV No.1163/2016 dated 17.11.2016, set aside the order of detention passed therein against the detenu by name Kishore Kumar, S/o.Rajan, aged 24 years quash the same and produce the detenu and set him at liberty now detained in Central Prison-II, Puzhal, Chennai.

For Petitioner : Mr.C.C.Chellappan

For Respondents : Mr.V.M.R.Rajentren,  
Additional Public Prosecutor

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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 BCDFGISSSV No.1163/2016 dated 17.11.2016 by the Detaining Authority against the detenu by name, Kishore Kumar, aged 24 years, S/o.Rajan,

residing at No.3/176, L.V.Nagar, Balakrishnapuram, New Gummidipoondi, Thiruvallur District- 601 201 and quash the same.

2. The Inspector of Police, M-4, Redhills 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. T-4, Maduravaiyal Police Station, Crime No.1297 of 2014, registered under Section 379 of Indian Penal Code;
- ii. E-5, Sholavaram Police Station, Crime No.512 of 2015 registered under Section 379 of Indian Penal Code; and
- iii. Vellore North Police Station Crime No.376/2016 registered under Section 379 of Indian Penal Code.

3. Further it is averred in the petition that on 20.09.2016, one Muthukumar, S/o.Gnanaraj, residing at No.126/5, Bhavani Nagar, Thirthangaraipattu, Redhills, Chennai -52, as de facto complainant, has given a complaint in Redhills Police Station wherein it is averred that in the place of occurrence the detenu scolded him with filthy words and subsequently taken a sum of Rs.600/- by using deadly weapon and also threatened to murder him and under such circumstance, a case has been registered in Cr.No.1173 of 2016 under Sections 341, 294[b], 336, 427, 397 and 506[ii] 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 at a subjective satisfaction to the effect that the detenu is a habitual offender and ultimately, 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 friend 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 relevant materials to the Detaining Authority. The Detaining Authority after considering all the relevant materials and other connected documents, has arrived at a subjective satisfaction to the effect that the detenu is a habitual offender by way of passing 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. Per contra, the learned Additional Public Prosecutor has contended that the representation given by the petitioner has been disposed of without delay and therefore, the contention put forth 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, sixteen clear working days are available and in between column Nos.12 and 13, three clear working days are available and no explanation has been given on the side of the respondents with regard to such delay 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.

9. In fine, this petition is allowed. The Detention Order dated 17.11.2016 passed in No.BCDEFGISSSV No.1163 of 2016 by the first respondent against the detenu by name, Kishore Kumar, aged 24 years, S/o.Rajan, residing at No.3/176, L.V.Nagar, Balakrishnapuram, New Gummidipoondi, Thiruvallur District- 601 201 is quashed and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case.

Sd/-  
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

gpa

To

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

2.The Commissioner of Police  
Greater Chennai  
Vepery  
Chennai - 600 007

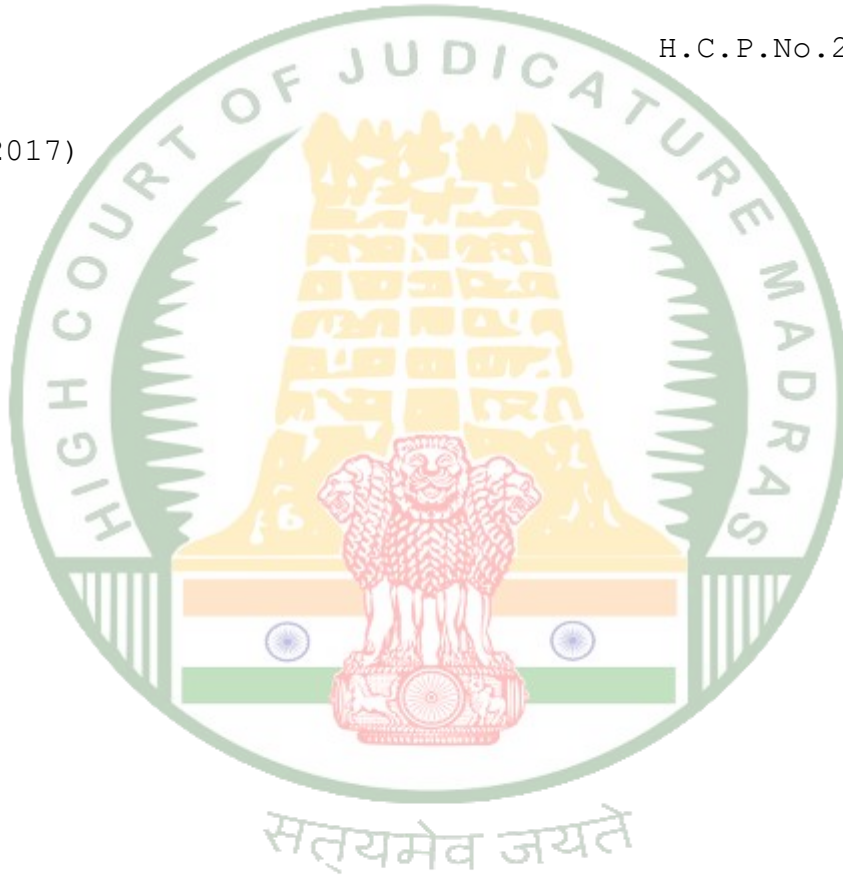
3.The Superintendent, Central Prison II,  
Puzhal, Chennai.  
(In duplicate for communication to Detenue)

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

5.The Public Prosecutor,  
High Court, Madras.

H.C.P.No.2682 of 2016

SKV(CO)  
VR(21/07/2017)



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