

(2014) 12 MAD CK 0279

Madras High Court (Madurai Bench)

Case No: Habeas Corpus Petition(MD) No. 1002 of 2014

Uma Mageswari

APPELLANT

Vs

The Secretary to Government,
State of Tamil Nadu

RESPONDENT

Date of Decision: Dec. 9, 2014

Acts Referred:

- Constitution of India, 1950 - Article 22(5), 226
- Penal Code, 1860 (IPC) - Section 109, 120(b), 147, 148, 149

Hon'ble Judges: V.S. Ravi, J; A. Selvam, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

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 detention order passed in No. 44/BDFGISSV/2014, dated 20.08.2014 by the detaining authority, who has been arrayed as second respondent herein against the detenu by name Balamurugan, Son of Pushparaj and quash the same and thereby set him at liberty forthwith.

2. The Inspector of Police, C1 Thideer Nagar Police Station as sponsoring authority has submitted an affidavit to the detaining authority, wherein it is stated that the detenu has involved in the following adverse cases:

(i) Crime No. 1064 of 2012, C4 Thilagarthidal Police Station registered under Sections 147, 294(b), 324, 307 of the Indian Penal Code and Section 3(1) of the Tamil Nadu Properties (Damage and Loss) Prevention Act, 1992 @ Sections 147, 148, 294(b), 427, 324 and 506(ii) read with 149 of the Indian Penal Code.

(ii) Crime No. 329 of 2013, C4 Othakkadai Police Station registered under Sections 147, 148, 341, 302 and 506(ii) of the Indian Penal Code @ Sections 147, 148, 342,

120(b), 109, 201, 302 and 506(ii) of the Indian Penal Code .

(iii) Crime No. 683 of 2014, C4 Thilagarthidal Police Station registered under Sections 392 read with 397 and 506(ii) of the Indian Penal Code.

3. Further it is stated in the affidavit that on 13.07.2014, one Selvaraj, Son Karuppiah, has given a complaint against the detenu in Thideer Nagar Police Station and the same has been registered in Crime No. 700 of 2014 under Sections 392 read with 397 and 506(ii) of the Indian Penal Code and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

4. The detaining authority viz., second respondent herein after perusing the averments made in the affidavit coupled with other connected documents has derived 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 Habeas Corpus 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 all the averments made in the petition are false and ultimately prayed to dismiss the same.

6. The learned counsel appearing for the petitioner has contended that on the side of the detenu two 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.

7. The learned Additional Public Prosecutor has contended that the representations submitted on the side of the detenu have been duly considered and disposed of without delay and therefore the detention order in question does not require any interference.

8. On the side of the respondents, a proforma has been submitted wherein it has been clearly stated that with regard to first representation in between Column Nos. 7 and 9, seven clear working days are available and in between Column Nos. 12 and 13, ten clear working days are available and with regard to second representation in between Column Nos. 7 and 9, five clear working days are available and in between Column Nos. 12 and 13, nine clear working days are available and no explanation has been given on the side of the respondents with regard to such delay and that itself 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 Habeas Corpus Petition is allowed and the detention order dated 20.08.2014 passed in No. 44/BDFGISSV/2014, by the second respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., Balamurugan, Son of Pushparaj at liberty forthwith, unless he is

required to be incarcerated in connection with any other case.