



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **04.09.2015**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
and

THE HONOURABLE MR.JUSTICE **V.S.RAVI**
H.C.P (MD) No.1051 of 2015

Aavudaiyammal

.. Petitioner

Vs.

1. State represented by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City.

3. The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to direct the respondents herein to produce the detenu, K.Marimuthu @ Mariselvam @ Kattamari, aged 18 years, S/o. Karuppasamy Thevar, before this Court, who has been termed as "Goonda" who is now detained at Borstal School, Pudukottai and call for the records relating to the detention order in No.16/BCDFGISSSV/2015 dated 04.03.2015, passed by the 2nd respondent herein and set aside the same and set the detenu at liberty.

For Petitioner : Mr.S.Angappan

For Respondents : Mr.T.Mohan

Additional Public Prosecutor.

O R D E R

[Order of the Court was made by **S.NAGAMUTHU, J**]

The petitioner is the mother of the detenu, namely K.Marimuthu @ Mariselvam @ Kattamari, S/o. Karuppasamy Thevar, aged 18 years. He has been detained under the Tamil Nadu Act 14 of 1982 by the order of the second respondent in his proceedings in No.16/BCDFGISSSV/2015 dated 04.03.2015 branding him as a "Goonda". Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.



2. We have heard the learned counsel appearing for the petitioner, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

3. Though several grounds have been raised in this petition, the learned counsel for the petitioner would mainly focus his arguments on the ground that there is violation of Article 22(5) of the Constitution of India and under Section 8(1) of Tamilnadu Act 14 of 1982.

4. In this case, the order of detention was made on 04.03.2015 and on the same day, he was lodged in prison. Admittedly, the booklet containing the materials considered by the Detaining Authority and the satisfaction arrived at were served on the detenu only on 10.03.2015. Thus, according to the learned counsel for the petitioner, there is violation of Section 8(1) of the Tamilnadu Act 14 of 1982 and Article 22(5) of the Constitution of India.

5. The learned Additional Public Prosecutor would submit that in this case, as soon as the detenu was detained under the detention order, the grounds of detention were furnished to him on 04.03.2015 itself, in which, the booklet containing the materials of the Detaining Authority are not furnished him on the same day. It is furnished on 10.03.2015. Thus, according to the learned Additional Public Prosecutor, there is no violation of Section 8(1) of the Tamilnadu Act 14 of 1982 as well as Article 22(5) of the Constitution of India.

6. We have considered the above submissions.

7. At the outset, it needs to be mentioned that in a preventive detention, being a detention without a proper trial and proof of any offence, the provision should be construed very strictly. The right to have earliest opportunity of making representation against the detention order has been guaranteed as a fundamental right under Article 22 (5) of the Constitution of India. The said provision reads as follows:

"Article 22. (5). When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

<https://hcservices.ecourts.gov.in/hcservices> Section 8(1) of the Tamilnadu Act 14 of 1982 reads as follows:



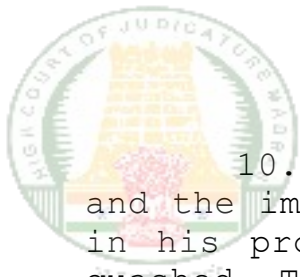
"8. Grounds of order of detention to be disclosed to persons affected by the order. (1). When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government."

A plain reading of the said provision would go to show that it is not only enough to communicate the detenu, the grounds on which, the order has been made and also he shall be afforded the earliest opportunity of making a representation against the order. It is only in compliance with these provisions, the booklet containing the materials, which have been considered by the Detaining Authority to arrive at a subjective satisfaction to pass the detention order are furnished. In the absence of the service of these papers, the detenu cannot have an opportunity to effectively make a representation.

9. In such view of the matter, though it is true that in this case, the grounds of detention were communicated to him on 04.03.2015, other papers were served on 10.03.2015, which, in our considered view, is in violation of Article 22(5) of the Constitution of India and similarly Section 8(1) of the Tamil Nadu Act 14 of 1982. Such view has been taken in an earlier order passed by yet another Division Bench of this Court in **Malleeswari -vs- State Government and another** reported in **(2011) 1 MLJ (Crl) 513**, wherein in paragraph No.7 as follows:

"It is not in controversy that the order of detention came to be set aside on the grounds recorded above. As rightly pointed out by the learned counsel for the petitioner, though the impugned detention order came to be passed on 02.03.2010, a copy of the same and the grounds of detention and connected papers were supplied to the detenu only on 09.03.2010. From a reading of the detention order and grounds, it is quite clear that the copies of the adverse cases and the ground case, were to be supplied to the detenu not exceeding five days from the date of the order of detention. In the present case on hand, though the impugned detention order was passed on 02.03.2010, it was supplied to him only on 09.03.2010, which is violative of the mandatory provision."

In view of the above said provisions, in this case, the detention order is liable to be set aside.



10. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in No.16/BCDFGISSSV/2015, dated 04.03.2015 is quashed. The detenu, namely, K.Marimuthu @ Mariselvam @ Kattamari, S/o.Karuppasamy Thevar, aged 18 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(Crl.Side)

/True copy/

Sub Assistant Registrar

PJL/RR

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
2. The Commissioner of Police,
Office of the Commissioner of Police, Tirunelveli City.
3. The Inspector of Police,
Palayamkottai Police Station, Tirunelveli District.
4. The Superintendent,
Borstal School, Pudukottai.
(In duplicate to communicate the detenu)
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
6. The Joint Secretary to Government
Public (Law & Order) Department,
Fort St., George, Chennai-4

+1cc to Mr.S.JEYAKARTHIK, ADVOCATE SR NO.52344

ORDER MADE IN
H.C.P (MD) No.1051 of 2015
04.09.2015

RG.14.09.2015/AAL/MAP/SAR-I 4P/8C.