



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1068 of 2015

C.Patchayappan

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
St.George Fort, Chennai 600 009.

2.The District Collector,
and District Magistrate, Theni District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records in detention order passed in Detention Order No.9 of 2014, dated 18.12.2014 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body of the petitioner's son namely Sundarraj, aged 25 years, S/o.Patchayappan, before this Hon'ble Court and Set him at liberty from Central Prison, Madurai.

For petitioner : Mr.S.Samuel James Deva Shagayam

For Respondents : Mr.A.Ramar
Additional Public Prosecutor

O R D E R

[Order of the Court was made by **P.R.SHIVAKUMAR, J.**]

The petitioner is the father of the detenu. The detenu has been detained by the second respondent by his order in Detention Order No.09 of 2014, dated 18.12.2014, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.143 of 2014 registered on the file of Odaipatti Police Station for offences punishable under Sections 302 r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.



3. Though the order of detention is assailed on several grounds, the learned counsel for the petitioner seeks leave of the Court to raise an additional ground and we permit the same. The learned counsel for the petitioner submits that the non-application of mind on the part of the Detaining Authority is apparent from Paragraph No.5 of the grounds of detention, wherein the subjective satisfaction of the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case came to be expressed.

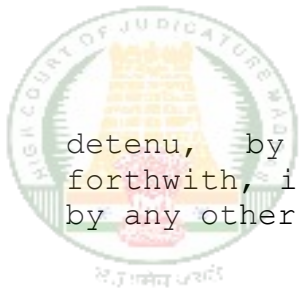
4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. The relevant part of the Paragraph No.5 in the grounds of detention is re-produced hereunder:-

"5. I am aware that accused Sundarraj, is in remand in connection with the case in Odaipatti Police Station FIR No.143 of 2014, u/s 302 IPC., r/w Section 5 of (g) (m) and Section 6 of Protection of Children from Sexual Offences Act, 2012. His remand has been extended upto 24.12.2014. **I am also aware that there is a real possibility of the accused coming out on bail in this case bail application was filing above in before the same Court of High Court.** If he comes out on bail, since in similar cases bail was granted. In a similar case registered at Allinagaram Police Station Crime No.195/2013, u/s 302 IPC, the accused Thiru Murugantham, S/o.Kaliappan, Pandi Kovil Street, Allinagaram was granted bail by the Hon'ble Chennai High Court, Madurai Bench Madurai in CrI.OP[MD].No.15094 of 2013, dated 03.10.2013".

6. The highlighted portion will show that the Detaining Authority did not apply his mind and he has made an observation which is meaningless. It is so nebulous, as it cannot be ascertained from the said part of the grounds of detention as to whether any bail application was pending or a bail application was going to be filed. The very absurd language used therein will show total non-application of mind on the part of the Detaining Authority. Apart from the above, the learned counsel for the petitioner also submits that no bail application was filed in the ground case, but still the Detaining Authority proceeded with an observation that there was real possibility of the detenu coming out on bail in the ground case on the basis of the order of bail granted in respect of another case. Hence, on the ground of non-application of mind as seen from the observation of nebulous statement in the grounds of detention regarding the pendency or otherwise of the bail application in the ground case, the expression of subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case stands vitiated and the same can be termed as *ipse dixit*, not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 18.12.2014, made in Detention Order No.9 of 2014, passed by the second respondent, the District Collector and District Magistrate, Theni, and directs the release of the



detenu, by name Sundarraaj, aged about 25 years, S/o.Patchayappan forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
St.George Fort, Chennai 600 009.
- 2.The District Collector,
and District Magistrate, Theni District.
- 3 The Superintendent of Prison, Central Prison, Madurai
- 4 The Commissioner of Police, Theni District.
- 5 The Joint Secretary, Government of Tamil Nadu,
Public (Law & order) Department, Fort St. George, Chennai 600 009.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.S.Samuel James Deva Shagayam, Advocate in SR.No. 76150

TS/08.01.2016/3P-8C/PM-MP

ORDER MADE IN
H.C.P (MD) No.1068 of 2015

21.12.2015