



WEB COPY

OBEORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1119 of 2015

Murugesan

.. Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
For St. George,
Chennai - 600 009.

2.The District Magistrate and District Collector,
Office of the District Collector and District Magistrate,
Virudhunagar District.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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, connected with the detention order of the respondent No.2 in Cr.M.P.No.14/2015 (GOONDA), dated 15.07.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Murugesan, Son of Subbu @ Sandiyar Subbu, aged 52 years, now detained in Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Ramar

Additional Public Prosecutor

O R D E R

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

The petitioner is the detenu. The detenu was detained by the second respondent by his order in Cr.M.P.No.14/2015, dated 15.07.2015, 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.354 of 2015 on the file of Srivilliputhur Town Police Station registered for alleged offence punishable under Section 392 of the Indian Penal Code and following eight adverse cases:-

(i) Crime No.491 of 2014 registered on the file of Sivakasi Town Police Station for alleged offences under Sections 457 and 380 of the Indian Penal Code;



(ii) Crime No.515 of 2014 registered on the file of Sivakasi Town Police Station for alleged offence punishable under Section 380 of the Indian Penal Code;

(iii) Crime No.617 of 2014 registered on the file of Rajapalayam South Police Station for alleged offences punishable under Sections 454 and 380 of the Indian Penal Code;

(iv) Crime No.28 of 2015 registered on the file of Rajapalayam South Police Station for alleged offences punishable under Sections 457, 380 and 511 of the Indian Penal Code;

(v) Crime No.194 of 2015 registered on the file of Srivilliputhur Town Police Station for alleged offences punishable under Sections 457 and 380 of the Indian Penal Code;

(vi) Crime No.268 of 2015 registered on the file of Virudhunagar West Police Station for alleged offence punishable under Section 392 of the Indian Penal Code;

(vii) Crime No.84 of 2015 registered on the file of Malli Police Station for alleged offence punishable under Section 392 of the Indian Penal Code; and

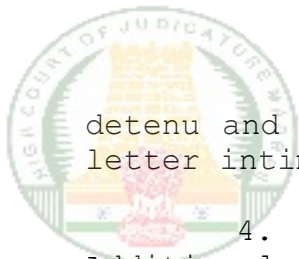
(viii) Crime No.259 of 2015 registered on the file of Sivakasi Town Police Station for alleged offence punishable under Section 392 of the Indian Penal Code.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of the "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and public peace and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case as well as in the adverse cases, 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 a number of grounds, the learned counsel for the petitioner mainly relies on the following contentions:-

(i) The Detaining Authority expressed subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the cases in which he was arrested and remanded to judicial custody, relying on a bail order dated 26.12.2014 made in CrI.M.P.No.9865 of 2014 by the learned Judicial Magistrate II, Srivilliputhur, granting bail to one Santhosh @ Bonda in Crime No.362 of 2014 on the file of Srivilliputhur Police Station for offences punishable under Sections 454 and 380 of the Indian Penal Code, as the similar case in which bail was granted. But while making such a comparison, the Detaining Authority failed to note that the said case was not comparable with the ground case, since the ground case was registered for the offence under Section 392 of the Indian Penal Code, whereas the bail order cited as the order in similar case was one in respect of a case registered for offences under Sections 454 and 380 of the Indian Penal Code; and

(ii) The copy of the bail order relied on by the Detaining Authority in the alleged similar case has not been furnished to the



detenu and on the other hand, a document not relied on viz., copy of the letter intimating the condition to the Police Station alone was produced.

4. We have heard the submissions made by Mr.A.Ramar, learned Additional Public Prosecutor on behalf of the said submissions made by the learned counsel for the petitioner. The submissions, thus, made by the learned Additional Public Prosecutor are also taken into consideration.

5. As rightly pointed out by the learned counsel for the petitioner, the ground case which was allegedly registered for an offence under Section 392 of the Indian Penal Code is not comparable with Crime No.362 of 2014 on the file of Srivilliputhur Town Police Station, which was registered for lesser offences, viz., offences under Sections 454 and 380 of the Indian Penal Code.

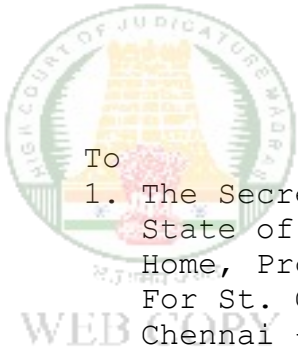
6. Though it has not been raised as a ground, this Court is able to find out a discrepancy in the grounds of detention. In paragraph No.4 (i), the ground case viz., Crime No.354 of 2015 on the file of Srivilliputhur Town Police Station, has been recited to be one registered for an offence under Section 392 of the Indian Penal Code, whereas in paragraph No.5 of the grounds of detention, two more Sections in addition to Section 392 of the Indian Penal Code came to be referred to as the penal provisions under which the act committed by the petitioner in the ground case was made punishable. The said provisions are Sections 457 and 380 of the Indian Penal Code. For the said observation, there is no other material available in the booklet. The said observation was made without any basis and the discrepancy between paragraph Nos.4(i) and 5 will show non-application of mind on the part of the Detaining Authority and mechanical passing of the detention order.

7. So far as the second ground is concerned, admittedly, the copy of the bail order cited as the one passed in a similar case has not been supplied to the petitioner and it is not found in the booklet also. On the other hand, at page No.397 of booklet, the copy of the condition intimation letter addressed to the Police Station alone has been furnished. Hence, as rightly pointed out by the learned counsel for the petitioner, non supply of a relied on document and supply of a document which was irrelevant would vitiate the order of detention, as the same would amount to denial of reasonable opportunity to make an effective representation. On both grounds, the order of detention is liable to be interfered with and set aside.

8. In the result, this Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 15.07.2015, made in Cr.M.P.No.14/2015, passed by the second respondent, the District Magistrate and the District Collector, Virudhunagar District and directs the release of the detenu, by name Murugesan, Son of Subbu @ Sandiyar Subbu, aged about 52 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (AE)



To

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

+1 CC to Mr.R. Alagumani, Advocate, SR No.67898

ORDER MADE IN
H.C.P (MD) No.1119 of 2015
26.11.2015

SH/GSV-AN:10.12.2015:4P/8C