



BEFORE 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.1201 of 2015

Thirupathy

... Petitioner

Vs.

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ramanathapuram.
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 No.14/Goonda/2015 dated 10.08.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Thirupathy, Son of Selvaraj, aged about 25 years, now detained at 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

ORDER

[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 No.14/Goonda/2015 dated 10.08.2015, 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.286 of 2015 on the file of Paramakudi Town



Police Station registered for alleged offences punishable under Sections 392 read with 397 of the Indian Penal Code and following two adverse cases:-

(i) Crime No.193 of 2014 registered on the file of Paramakudi Town Police Station for alleged offence punishable under Section 392 of the Indian Penal Code.

(ii) Crime No.237 of 2014 registered on the file of Paramakudi 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 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.

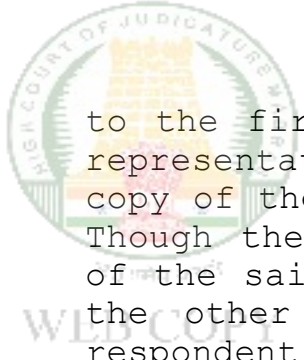
3. Though the order of detention is assailed on a number of grounds, the learned counsel for the petitioner mainly relies on the following contentions:-

(i) The initial remand order in the ground case was made in English and a copy of the same alone was furnished. Even after a representation was made for furnishing a translated copy of the said document, there was no response and the same amounts to denial of reasonable opportunity.

(ii) The Detaining Authority referred to the initial order of remand in the ground case, which was upto 07.08.2015 and the Detaining Authority failed to ascertain whether remand of the detenu was extended as on the date of clamping of the order of detention and the same will amount to non-application of mind.

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. At page No.123 of the booklet, copy of the remand order made in the ground case is found. The operative portion of the order is found in English. Even though the detenu used to sign in English, it is not clear from the order that he was not much conversant with English and he should be furnished with a translated copy of the remand order, a representation was made by the petitioner on 12.08.2015



to the first respondent/the Secretary to Government. In the said representation, he had made a plea for the supply of a translated copy of the remand order dated 26.07.2015 made in the ground case. Though the same was submitted on 12.08.2015, the translated copy of the said remand order has not been supplied to the detenu. On the other hand, in the counter affidavit filed by the second respondent, it has been stated that it is not necessary to furnish a translated copy of the remand order. The above said averment regarding the non supply of translated copy of the remand order has not been met with by the respondents in their counter affidavit. A bald averment has been made to the following effect:- "the detenu himself admitted that he received all the documents pertaining to the booklet on 12.08.2015. Hence, the averment of the petitioner is denied." The non supply of translated copy of the remand order, even after a request was made, has resulted in denial of reasonable opportunity to the petitioner to make an effective representation against the order of detention.

6. So far as the other ground is concerned, there is no material available in the booklet to show that the Detaining Authority considered the question whether the initial remand which was to expire on 07.08.2015 was extended as on the date of passing of the order of detention. The failure to seek further information and clarification in this regard would vitiate the order, as the same exhibits non consideration of a relevant factor and non-application of mind to the same.

7. On both grounds, the Habeas Corpus Petition is bound to be allowed and 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 10.08.2015, made in No.14/Goonda/2015, passed by the second respondent / the District Collector and the District Magistrate, Ramanathapuram and directs the release of the detenu, by name Thirupathy, Son of Selvaraj, aged about 25 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



To

1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
 2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Ramanathapuram.
 3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
 4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George,
Chennai - 600 009.
 5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- + 1 CC TO M/S.R.ALAGUMANI, ADVOCATE IN SR NO. 67897

PS

TE/AAL-MPA/ 09/12/2015 : 4P/7C

ORDER MADE IN
H.C.P (MD) No.1201 of 2015
26.11.2015