



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.12.2015**

CORAM:

THE HONOURABLE MR.JUSTICE **P.R.SHIVAKUMAR**

and

THE HONOURABLE MR.JUSTICE **V.S.RAVI**

H.C.P(MD)No.1265 of 2015

A.Chandran

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort.St.George, Chennai 600 009.
- 2.The District Collector/District Magistrate,
Collectorate, Tirunelveli District, Tirunelveli 9.
- 3.The Superintendent of Central Prison,
Palayamkottai Central Prison,
Tirunelveli 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 second respondent in M.H.S.Confdl No.96 of 2015, dated 15.08.2015 and quash the detention order and produce the body of the petitioner's son namely C.Senthilkumar @ Vakkil Kumar [29/15], now confined at Central Prison, Palayamkottai, Tirunelveli District, before this Court and set him at liberty forthwith.

For petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.A.Ramar

Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu, namely C.Senthilkumar @ Vakkil Kumar, aged about 29 years and he has challenged the order of detention passed by the second respondent in M.H.S.Confdl No.96 of 2015, dated 15.08.2015.

2. The detenu, C.Senthilkumar @ Vakkil Kumar came to adverse notice in two adverse cases in 1).Crime No.246 of 2014, registered on the file of Veeravanallu Police Station, for offences punishable under Sections 147, 148, 449, 302 and 506(ii) of the Indian Penal Code, r/w Section 149 of the Indian Penal Code and 2).Crime No.112 of 2015, registered on the file of Veeravanallur Police Station, for



offences punishable under Sections 120(b), 147, 435 of the Indian Penal Code and Section 3 of the Tamil Nadu Property (Prevention of Damage And Loss) Act, 1992, and the ground case in Crime No.75 of 2015 registered on the file of Mukkkudal Police Station for offences under Sections 387 and 506(ii) of the Indian Penal Code, to hold the detenu as "Goonda" in exercise of the powers conferred by sub-section 1 of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Cyber-Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982] read with the orders issued by the Government in G.O.[D]. No.148, Home Prohibition and Excise [xvi] Department, dated 18.07.2015.

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

(i) Apart from the materials submitted by the Sponsoring Authority, the Detaining Authority, namely, the District Collector directed his subordinate to conduct a secret enquiry and submit a report and the same was also taken into account to make a decision as to whether an order of detention was to be passed or not. The said procedure shows that an extraneous material came to be taken into consideration by the Detaining Authority.

(ii) Though the Detaining Authority cannot be said to be powerless to seek such a report from the Sub-collector, the report, which was a result of the secret enquiry, refers to four cases, in which the detenu was involved, but the detenu was not furnished with the particulars of all those four cases. The Detaining Authority furnished particulars of only two cases out of four cases referred to in the report of the Sub-Collector. Non-furnishing of the particulars of the other two cases will not only show non-application of mind on the part of the Detaining Authority, but also the same will amount to denial of reasonable opportunity to the detenu to make an effective representation.

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. As rightly contended by the learned counsel for the petitioner, besides considering the materials placed by the Sponsoring Authority, the Detaining Authority has chosen to call for a report from his subordinate, namely, the Sub-collector. A copy of the report of the Sub-collector has been furnished to the detenu. Out of four cases referred to in the report of the Sub-collector, the copies relating to two cases alone were furnished and copies relating to the other two cases were not furnished to the detenu. The same, as rightly contended by the learned counsel for the petitioner, would show even non-application of mind by the Detaining Authority regarding those two cases, copies relating to which have not been included in the typed set of papers. Moreover, the non-supply of the



copies relating to those two cases, which were also taken into account by the Detaining Authority, vitiates the proceedings, as it will amount to denial of reasonable opportunity to the detenu to make an effective representation against the order of detention. On that ground alone, the order of detention is liable to be interfered with and set aside.

6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 15.08.2015, made in M.H.S.Confdl No.96 of 2015, by the second respondent, the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu, by name C.Senthilkumar @ Vakkil Kumar, aged about 29 years, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (C.O.)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort.St.George, Chennai 600 009.
- 2.The District Collector/District Magistrate,
Collectorate, Tirunelveli District, Tirunelveli 9.
- 3.The Superintendent of Central Prison,
Palayamkottai Central Prison, Tirunelveli District.
(In Duplicate to communicate the detenu)
4. The Joint Secretary to Government,
Public (Law and Order), Fort St.George, Chennai -9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.68687

akm/07.12.15 /3p-8c/SK/SKN/SAR-I

ORDER MADE IN
H.C.P (MD) No.1265 of 2015
01.12.2015