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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1304 of 2015

Valliammal

.. Petitioner

Vs.

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

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

3.The Superintendent of 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.No.95 of 2015, dated 14.08.2015 and quash the same and direct the respondents to produce the body and person of the detenu by name Ganesan @ Katta Ganesan S/o.Ramaiah Thevar, aged about 33 years, now detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For petitioner

: Mr.S.Malaikani

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 mother of the detenu. The detenu has been detained by the second respondent by his order in M.H.S.No.95 of 2015, dated 14.08.2015, 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.293 of 2015 registered on the file of Valliyoor Police Station for offences punishable under Sections 294(b), 307 and 506(ii) of the Indian Penal Code and following four adverse cases:-

(i). Crime No.519 of 2012 registered on the file of Valliyoor Police Station for offences punishable under Sections 294(b), 307 and 506(ii) of the Indian Penal Code;

(ii) Crime No.521 of 2013 registered on the file of Valliyoor Police Station for offences punishable under Sections 147, 294(b), 307 and 506

(ii) of the Indian Penal Code;

(iii).Crime No.560 of 2013 registered on the file of Valliyoor Police Station for offences punishable under Sections 294(b), 323 and 506(ii) of



the Indian Penal Code; and

(iv). Crime No. 243 of 2015 registered on the file of Valliyoor Police Station for offences punishable under Sections 294(b), 323 and 506(ii) of the Indian Penal Code.

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 has been assailed on several grounds, the learned counsel for the petitioner mainly relies on the following contentions:-

i. The Detaining Authority referred to G.O.(D).No.148, Home, Prohibition and Excise (XVI) Department, dated 18.07.2015, as the order of the Government extending the delegation of power under sub-section 2 of Section 3 of the Act 14 of 1982, as the source of the power used by the Detaining Authority to pass the order of detention, but the copy of the said Government Order was not furnished along with the grounds of detention. Even after a representation demanding supply of a copy of the said Government Order was made, the same was not furnished. The non-furnishing of the copy of the Government Order even after a request was made amounts to denial of reasonable opportunity to challenge the order of detention in an effective manner.

ii. There is a delay in consideration of the post-detention representation dated 31.08.2015 for revocation of the order of detention, but, till date, no order came to be passed on the said representation either revoking the order of detention or acting on the 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. So far as the first contention is concerned, admittedly, the power delegated to the Detaining Authority was being periodically extended by fresh Government Orders passed once in three months, a copy of the latest Government Order extending the delegation, which has been referred to in the detention order, has not been furnished to the detenu. Though non-furnishing of the same initially may not be taken serious note of, when a representation is made seeking supply of a copy of the said Government Order to make an effective challenge to the detention order, such request ought to have been considered properly and the failure to do so and the mechanical rejection of such request amounts to denial of reasonable opportunity to make an effective challenge to the order of detention. On that score, the order of detention is liable to be set aside.

6. So far as the second contention is concerned, in the counter affidavit filed by the second respondent, the following particulars are found:-

1. Representation dated Nil submitted by the
detenu was received from Government
on : 28.09.2015



2. Remarks called for from the Sponsoring Officer
: 28.09.2015
3. Remarks received from the Sponsoring Officer
: 29.09.2015
4. Remarks sent to the Government
: 30.09.2015"

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7. After the receipt of the remarks from the Sponsoring Authority, till 23.10.2015, the date on which the counter affidavit came to be filed, no order seems to have been passed on the post-detention representation. As rightly contended by the learned counsel for the petitioner, the same itself reveals that there was a delay of more than five working days in considering the post-detention representation and the same will also vitiate the order of detention. Hence, on both the grounds, the order of detention is liable to be set aside.

8. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 14.08.2015, made in M.H.S.No.95 of 2015, by the second respondent, the District Collector and District Magistrate, Tirunelveli and directs the release of the detenu, by name Ganesan @ Katta Ganesan, S/o.Ramaiah Thevar aged about 33 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,
Home, Prohibition and Excise Department,
State of Tamil Nadu, Fort.St.George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
(In Duplicate for communication to detenu)
4. The Joint Secretary to Government,
Public (Law & Order)
Fort.St.George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.S.Malaikani, Advocate, SR No.70405