



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.12.2015**

CORAM:

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

and

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

H.C.P(MD)No.1328 of 2015

Saleem @ Mohammed Saleem

.. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Secretariat, Chennai 600 009.

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

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 calling for the entire records connected with the detention order of the second respondent in Detention Order No.H.S.(MD).Confdl.No.67 of 2015, dated 31.08.2015 and quash the same and direct the respondents to produce the detenu namely Saleem @ Mohammed Saleem, S/o.Abdul Kabur, aged about 27 years, detained in Palayamkottai 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, J.**]

The petitioner is the detenu. He has been detained by the second respondent by his order in Detention Order No.H.S.(MD). Confdl.No.67 of 2015, dated 31.08.2015, 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.489 of 2015 registered on the file of Thalamuthunagar Police Station for offences punishable under Sections 341, 294(b), 387, 307 and the 506(ii) of the Indian Penal Code and following five adverse cases:-

(i). Crime No.541 of 2014 registered on the file of Thoothukudi South Police Station for offences punishable under Sections 147, 148, 294(b), 307 and 506(ii) of the Indian Penal Code;

<https://hcservices.ecourts.gov.in/hcservices/> No.71 of 2015 registered on the file of Thoothukudi South Police Station for offences punishable under Sections 147, 148, 294(b), 506(ii) of the Indian Penal Code and Section 3 of TNPPDL Act;



(iii) Crime No.41 of 2015 registered on the file of Muthaiahpuram Police Station for offences punishable under Sections 294(b), 387 and 307 of the Indian Penal Code;

(iv) Crime No.116 of 2015 registered on the file of Thoothukudi South Police Station for offences punishable under Sections 147, 148, 294(b), 450, 324, 307, 506(ii) of the Indian Penal Code, Section 4 of TNPWH Act and Section 3 of TNPPDL Act; and

(v) Crime No.227 of 2015 registered on the file of Thoothukudi South Police Station for offences punishable under Sections 341, 294 (b), 307 and 506(ii) of the Indian Penal Code.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of Drug Offender 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 a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the following contentions:-

(i). There was denial of reasonable opportunity to challenge the order of detention in an effective manner by the non-supply of a copy of the Government Order extending the delegation of power to the Detaining Authority. The failure to supply a copy of the Government Order even after a representation was made in writing seeking supply of the same amounts to denial of justice vitiating the order of detention itself.

(ii). In addition, with the permission of the Court, the learned counsel for the petitioner raised the following contention:-

Though the order of detention was approved by the Government by order dated 27.11.2015, the same was not communicated to the detenu without unexplained delay and that it came to be communicated to the detenu only on 09.12.2015.

4. According to the submissions made by the learned counsel for the petitioner, the said delay referred to in the second contention has not been explained and the same resulted in denial of an opportunity to make an effective representation to the Government for revocation of the order of detention and the same also disabled the detenu from making an effective challenge to the order of detention.

5. 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.

6. So far as the first contention of the learned counsel for the petitioner regarding the non-furnishing of the Government Order is concerned, admittedly, the power delegated to the Detaining Authority was being periodically extended by fresh Government Orders passed once in three months and 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.

7. Insofar as the second contention is concerned, admittedly, the order of detention was approved by the Government by order dated 27.11.2015. However, such order came to be communicated to the detenu only on 09.12.2015. The said delay has not been explained and the same resulted in denial of an opportunity to make an effective representation to the Government for revocation of the order of detention and the same also disabled the detenu from making an effective challenge to the order of detention. Thus, 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 31.08.2015, made in H.S(M).Confdl.No.67 of 2015, passed by the second respondent, the District Collector and District Magistrate, Thoothukudi, Thoothukudi District and directs the release of the detenu, by name Saleem @ Mohammed Saleem, aged about 27 years, S/o.Abdul Kabur forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To:

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