



WEB COPY

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.1338 of 2015

Ibrahim Shah

.. Petitioner

Vs.

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

2. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai.

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 second respondent in Detention Order No.120/BCDFGISSSV/2015, dated 04.09.2015 and quash the same and direct the respondents to produce the body and person of the petitioner's son by name Ibrahim Shah, S/o.Abdul Hameed, aged about 50 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

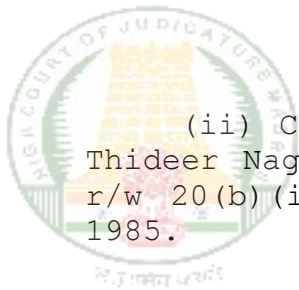
Additional Public Prosecutor

O R D E R

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

The petitioner is the detenu. He has been detained by the second respondent by his order in Detention Order No.120/BCDFGISSSV/2015, dated 04.09.2015, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.606 of 2015 registered on the file of C4 Thilagarthidal Police Station for offences punishable under Sections 8(c) r/w 20(b)(ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and following two adverse cases:-

(i). Crime No.2148 of 2011 registered on the file of Madurai City C1 Thideer Nagar Police Station for offences punishable under Sections 8(c) r/w 20(b)(ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985; and



(ii) Crime No.872 of 2013 registered on the file of Madurai City C1 Thideer Nagar Police Station for offences punishable under Sections 8(c) r/w 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

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 public health 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 contention:-

(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.

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 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 alone, the order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 04.09.2015, made in No.120/BCDFGISSSV/2015, by the second respondent, the Commissioner of Police, Madurai, and directs the release of the detenu, by name Ibrahim Shah S/o.Abdul Hameed, aged about 50 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (Crl.side)

/True copy/



To:

1. The Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
State of Tamil Nadu, Secretariat,
Fort.St.George, Chennai 600 009.
 2. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai.
 3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
 4. The Joint Secretary to the Government,
Public (Law & Order),
Mylapore, Chennai.
 5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1 CC to Mr.R.Alagumani, Advocate, SR No.71283

ORDER MADE IN
H.C.P (MD) No.1338 of 2015
09.12.2015

NB

SH/PM-MP:21.12.2015: 2P/7C