



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.12.2015**

CORAM:

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

and

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

H.C.P(MD)No.1455 of 2015

A.Ammu Kala

... Petitioner

Vs.

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

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

3.The Inspector of Police,
B-6 Jaihindpuram Police Station,
Madurai.

... 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.117/BCDFGISSSV/2015, dated 27.08.2015 and quash the same and direct the respondents to produce the body and person of the petitioner's son by name Palpandi @ Tempo Palpandi, S/o.Anguraj, aged about 19 years, now confined at Borstal School District Prison, Pudukkottai, before this Court and set him at liberty forthwith.

For petitioner

: Mr.S.M.A.Jinnah

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 Detention Order No.117/BCDFGISSSV/2015, dated 27.08.2015, 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.807 of 2015 registered on the file of Jaihindpuram Police Station for offences punishable under Sections 392 r/w 397 and 506(ii) of the Indian Penal Code and the following two adverse cases:-

(i). Crime No.1088 of 2013 registered on the file of Jaihindpuram Police Station for offences punishable under Sections 147, 148, 448, 341, 323, 324 and 506(ii) of the Indian Penal Code; and

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) Crime No.482 of 2014 registered on the file of Jaihindpuram Police Station for offences punishable under Sections 147, 148, 294(b),



324, 307 and 506(ii) @ 302 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 is assailed on several grounds, the learned counsel for the petitioner mainly relies on the submission that the order of approval passed by the Government approving the order of detention has not been served on the detenu and that the non-supply of the same amounted to denial of a reasonable opportunity to make a further and effective representation to the State Government for revocation of the order and to challenge the order in an effective manner, as he was kept in dark as to whether the order of the Detaining Authority was approved by the Government or not.

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. A specific ground has been raised as to the non-supply of a copy of the order of approval passed by the Government. But, in the counter affidavit of the Detaining Authority, Paragraph No.20 simply refers to the order of approval passed by the Government, namely G.O.Ms.No.5385, dated 07.09.2015. Though the said order approving the order of detention passed by the Detaining Authority is claimed to have been passed by the Government long back on 07.09.2015 itself, till date, a copy of the same was not served on the detenu. The non-service of the copy of the approval order, as rightly contended by the learned counsel for the petitioner, will vitiate the order of detention, as he was kept in dark regarding the fact as to whether the order of detention was legal or otherwise beyond 12 days. The non-supply of the same also caused prejudice, as it amounted to denial of a reasonable opportunity to make an effective representation for revocation of the order of detention or to challenge the order of detention in an effective manner at the earliest point of time. Hence, on the said ground, 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 27.08.2015, made in No.117/BCDFGISSSV/2015, passed by the second respondent, the Commissioner of Police, Madurai City and directs the release of the detenu, by name Palpandi @ Tempo Palpandi, aged about 19 years, S/o.Anguraj forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(CS-I)

/True copy/



NB
To:

1.The Principal Secretary to Government,
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Secretariat, Chennai 600 009.

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

3.The Inspector of Police,
B-6 Jaihindpuram Police Station,
Madurai.

4.The Superintendent, Borstal School District Prison, Pudukkottai.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

CSL/JGB-DP/22.01.2016/3P/6C

ORDER MADE IN
H.C.P (MD) No.1455 of 2015
21.12.2015