



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2015

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.843 of 2015

G.Lakshmi .. Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 9.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records of the second respondent vide his order in H.S(M)Confdl.No.44 of 2015, dated 10.05.2015 and to produce the body of the detenu viz., Selvam @ Muthuselvam, aged about 23 years, Son of Ganesan, who is presently detained in the Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.V.Devendhiran
For Respondents : Mr.A.Ramar
Additional Public Prosecutor

O R D E R

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

The petitioner is the mother of the detenu. The detenu was detained by the second respondent by his order in H.S(M) Confdl.No.44 of 2015, dated 10.05.2015, 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.101 of 2015 on the file of Arumuganeri Police Station registered for alleged offences punishable under Sections 341, 294(b), 307 and 506(ii) of



(i) Crime No.56 of 2015 registered on the file of Palayamkottai Police Station for alleged offences punishable under Sections 147, 148, 341, 294(b), 307 and 506(ii) of the Indian Penal Code;

(ii) Crime No.58 of 2015 registered on the file of Palayamkottai Police Station for alleged offences punishable under Sections 147, 148, 294 (b), 448, 323, 324, 307 and 506(ii) of the Indian Penal Code read with Section 3 of TNPPDL Act; and

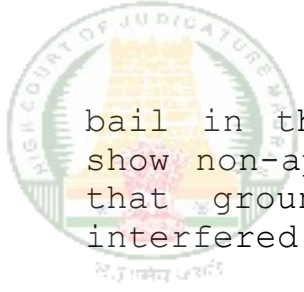
(iii) Crime No.61 of 2015 registered on the file of Arumuganeri Police Station for alleged offences punishable under Sections 302, 324, 506 (ii) of the Indian Penal Code altered into Sections 147, 302, 324, 506(ii) and 120(b) of the Indian Penal Code.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of the "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 Detention Order is assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that the subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the detenu coming out on bail to arrive at a conclusion that there was a need to pass an order of detention is *ipse dixit* showing non-application of mind, insofar as the Detaining Authority has not considered the possibility of the detenu coming out on bail in first and second adverse cases and the subjective satisfaction was expressed in respect of the ground case and the third adverse case alone.

4. We have heard the submissions made by Mr.A.Ramar, learned Additional Public Prosecutor on the submissions made by the learned counsel for the petitioner. The submissions, thus, made by the learned Additional Public Prosecutor are also taken into consideration.

5. From the grounds of detention, it is obvious that besides the ground case, in all the three adverse cases the detenu was arrested and remanded to judicial custody. But, as rightly contended by the learned counsel for the petitioner, the Detaining Authority has not considered the possibility of the detenu coming out on bail in the ground case and the third adverse case alone and omitted to consider the possibility of the detenu coming out on



bail in the first and second adverse cases. The omission would show non-application of mind vitiating 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, this Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 10.05.2015, made in H.S(M)Confdl.No.44 of 2015, passed by the second respondent / the District Collector and the District Magistrate, Thoothukudi District, Thoothukudi and directs the release of the detenu, by name Selvam @ Muthuselvam, Son of Ganesan, aged about 23 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

ps

To

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

+1CC to Mr.Deivendran Advocate Sr.No.67834

GJM/GSV/AN/11.12.2015-3P-8C

ORDER MADE IN
H.C.P (MD) No.843 of 2015
26.11.2015