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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2016

CORAM:

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

H.C.P(MD)No.1493 of 2015

Mariselvam @ Chinnavar

.. Petitioner

Vs.

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

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

3.The Superintendent of Prison,
Madurai Central Prison,
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 respondent No.2 in No.128/BCDFGISSSV/2015 dated 07.10.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Mariselvam @ Chinnavar S/o.Periya Karuppan, aged about 26 years, now detained at Central Prison, Madurai 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 was detained by the second respondent by his order in Detention Order No.128/BCDFGISSSV/2015 dated 07.10.2015, 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.673 of 2015 on the file of C.4 Thilagarthidal Police Station registered for offences punishable under Sections 392 r/w 397, 506(ii) of the Indian Penal Code and the following four adverse

(i) Crime No.621 of 2011 registered on the file of B.6 Jaihindpuram Police Station for offences



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punishable under Sections 147, 148, 341, 506(ii) and 302 r/w 34 IPC;

(ii) Crime No.728 of 2014 registered on the file of C.1 Thideer Nagar Police Station for offences punishable under Sections 392 r/w 397 and 506(ii) IPC;

(iii) Crime No.276 of 2015 registered on the file of C.1 Thideer Nagar Police Station for offences punishable under Sections 341, 294(b), 392, 397 and 506(ii) IPC; and

(iv) Crime No.627 of 2015 registered on the file of C.4 Thilagarthidal Police Station for offences punishable under Sections 294(b), 324 and 506(ii) IPC @ 147, 148, 341, 120(b), 324, 307 and 506 (ii) IPC.

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 primarily relies on the following contention:-

"The Detaining Authority after detaining him under the order of detention served the grounds of detention and also the relied on materials in the form of booklet. However, the copy of G.O.(D). No.139, Home, Prohibition and Excise(XVI) Department, dated 18.07.2015 was not included in the booklet supplied to the detenu. The non-supply of a relevant material which is also a relied on document will amount to denial of a reasonable opportunity to make an effective challenge to the order of detention. On that ground alone, the order of detention is liable to be set aside."

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

5. So far as the contention of the learned counsel for the petitioner regarding 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 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.

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6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention, made in No.128/BCDFGISSSV/2015 dated 07.10.2015, by the second respondent, the Commissioner of Police, Madurai City, Madurai and directs the release of the detenu by name Mariselvam @ Chinnavar S/o.Periya Karuppan, aged about 26 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai.
(In Duplicate to communicate the detenu)
4. The Joint Secretary to Government,
Public (Law and Order), Fort St.George, Chennai -9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Alagumani, Advocate Sr.No.1633

akm/11.01.2016/ 3p-8c/AAL/MPA/SAR-I

Order made in
H.C.P(MD)No.1493 of 2015
Dated:- 07.01.2016