



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1504 of 2015

Selvam

... Petitioner

Vs.

1.The State of Tamil Nadu,

Rep by its Principal Secretary to Government,
Home, Prohibition and Excise (XVI) Department,
Fort.St.George, Chennai 600 009.

2.The District Magistrate and District Collector,

Madurai District, 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 dated 03.10.2015 made in C.M.P.No.21 of 2015, on the file of the second respondent and quash the same and consequently direct the first respondent to produce the body or person of the detenu namely Gunasekaran, son of Selvam, aged about 35 years before this Court, now detained at Central Prison, Madurai forthwith.

For petitioner

: Mr.B.Pandiarajan

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 father of the detenu, namely Gunasekaran, son of Selvam, aged about 35 years. The detenu was detained by the second respondent by his order in C.M.P.No.21/2015, dated 03.10.2015, 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.138 of 2015 on the file of Madurai NIB CID unit for offences punishable under Sections 8 (c) r/w 20(b)(ii)(C), 27A, 29(1) and 25 of Narcotics Drugs, Psychotropic and 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 the order of detention is assailed on several grounds, the learned counsel for the petitioner mainly relies on the following contentions:-

" The Detaining Authority took note of the ground case alone and the papers relating to which alone have been furnished in the booklet as the documents relied on and referred to, whereas in the grounds of detention the Detaining Authority chose to make an observation that the petitioner habitually commits the offence under the provisions of the Narcotics Drugs Psychotropic and Substances Act, 1985. The said observation will show that the Detaining Authority referred to extraneous materials to form a subjective satisfaction regarding the necessity to pass an order of detention and on that ground alone, the order of detention is vitiated."

4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

5. From the grounds of detention, it is obvious that the Detaining Authority took note of the ground case, namely Crime No.138 of 2015 registered on the file of Madurai NIB CID Unit for offences under Sections 8 (c) r/w 20 (b) (ii) (c) , 27A, 29(1) and 25 of NDPS Act. However, in paragraph No.4 of Detention Order, the Detaining Authority made the following observations:-

"4. Hence, I am satisfied that Thiru.Gunasekaran is engaged habitually in possession and sale of intoxicating drugs and thereby committing offence and he is also acting in a manner prejudicial to the maintenance of Public Order and Public Health as such he is a "DRUG OFFENDER" as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982"

6. In support of the said observation, there is nothing available in the booklet supplied to the detenu which contains an information that the detenu was habitually involved in commission of offences of possessing and selling intoxicating drugs. Hence, the contention of the petitioner that observation of the detaining authority to the effect that the the detenu was habitually involved in commission of such offence is based on extraneous materials cannot be brushed aside as untenable. However, the learned Additional Public Prosecutor would contend that in the C.D. file relating to the ground case, the confession



statement of the detenu is available and in the confession statement his habitual involvement in the commission of such offences has been referred to. Assuming it to be correct, the observation made by the Detaining Authority regarding the habit of the detenu committing such offences was based on some other materials which were not included in the booklet as the documents perused, relied on and referred to. Hence, on the ground of relying on extraneous materials, the subjective satisfaction of the Detaining Authority can be assailed. Even otherwise, the failure to supply the copy of the alleged confession statement which, according to the submission of the learned Additional Public Prosecutor, is a relied on document, will amount to denial of reasonable opportunity to the detenu to make an effective representation against the order of detention at the earliest point of time. On both grounds indicated above, the order of detention is liable to be interfered with and set aside.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 03.10.2015, made in C.M.P.No.21/2015, by the second respondent, the District Collector and District Magistrate, Madurai District, Madurai and directs the release of the detenu, by name Gunasekaran, son of Selvam, aged about 35 years, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort.St.George, Chennai 600 009.
 - 2.The District Magistrate and District Collector,
Madurai District, Madurai.
 - 3.The Superintendent of Central Prison, Madurai.
 - 4.The Joint Secretary to Government,
Public (Law and Order), Fort Saint George, Chennai-9
 5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +One cc to Mr.B.Pandiarajan, Advocate, SR.No.3211
ssm
RL/7C/AAL/MPA/5/2/2016