



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2016

CORAM:

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

H.C.P(MD)No.1517 of 2015

Thirumalaikumar

.. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

2.The District Collector cum District Judicial Magistrate,
Office of the District Collector and District
Magistrate, Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records relating to the impugned detention order passed by second respondent in M.H.S.Confdl.No.107/2015, dated 10.10.2015, quash the same and direct the respondents to produce the detenu viz., Thirumalaikumar S/o.Kali, aged about 23 years detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Ramar,
Additional Public Prosecutor.

ORDER

[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 Detention Order in M.H.S.Confdl.No.107/2015, dated 10.10.2015, 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.123 of 2015 registered on the file of Puliyaarai Police Station for offences punishable under Sections 279, 338 and 304-A of the Indian Penal Code @ 120-B and 302 of the Indian Penal Code.

https://hcservices.courts.gov.in/hcservices/ following adverse case:-

"Crime No.106 of 2015 registered on the file of Puliyaarai Police Station for offences punishable under



Sections 294(b), 323, 324 and 506(ii) 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 a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the following contention:-

"There was denial of reasonable opportunity to challenge the order of detention in an effective manner as the copies of some of the documents included in the booklet, which were supplied to the detenu, are illegible and the same deprived the detenu of his right to make an effective representation with necessary details against the order of detention. It is also the contention of the learned counsel for the petitioner that the very fact that such illegible copies are available in the booklet supplied to the detenu, will show that the detaining authority relied on such illegible copies of the documents which will ultimately indicate the pre-determination and mechanical passing of the order of detention."

4. We have heard the submissions made by the learned counsel on either side. The learned Additional Public Prosecutor fairly admits that in the booklet available with the sponsoring authority also the said pages are illegible. We have also perused the materials available on record and also the booklet supplied to the detenu.

5. As pointed out by the learned counsel for the petitioner, the copies of the documents found in the booklet at Page Nos. 361, 425, 427 and 429 are totally illegible. Hence, as rightly contended by the learned counsel for the petitioner, by the supply of such illegible copies, he was denied reasonable opportunity of making an effective representation against the order of detention at the earliest point in time. Further, as rightly contended by the learned counsel for the petitioner, the very fact that such illegible copies are available in the booklet will show that the detaining authority provided with such illegible copies of the documents and the detaining authority arrived at a subjective satisfaction regarding the necessity to pass the impugned order of detention and regarding the real possibility of the detenu coming out on bail. The same will ultimately indicate the pre-determination and mechanical passing of the order of detention. On both the grounds, 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 10.10.2015, made in M.H.S. Confid. No. 107/2015, by the second respondent / the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu by name Thirumalaikumar



S/o.Kali, aged about 23 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar (T&P)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

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

+lcc to Mr.R.Alagumani, Advocate Sr.No.4026

akm/05.02.2016/ 3p- 9c/NGM/SS/SAR-I

ORDER MADE IN
H.C.P (MD) No.1517 of 2015
21.01.2016