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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.1586 of 2015

Prema

.. Petitioner

Vs.

1.The State Rep.by

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

2.The District Collector and District Magistrate,
Tiruvarur District,
Tiruvarur.

.. 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 pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in C.O.C. No.28 of 2015 dated 31.10.2015 in detaining the detenu under the Tamil Nadu Act 14 of 1982 as a GOONDA and quash the same and direct the respondents to produce the Detenu namely Arun @ Punarselvam, S/O.Maruthamuthu, Male aged about 28 years, who is detained in Central Prison, Tiruchirapalli, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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 viz., Arun @ Punarselvam S/o.Maruthamuthu. He was detained by the second respondent by his order in Detention Order in C.O.C.No.28/2015 dated 31.10.2015, 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.95 of 2015 on the file of Harithuvarmangalam Police Station registered for offences punishable under Sections 341, 294(b) and 386 of the Indian Penal Code and the following four adverse cases:-

<https://hcservices.ecourts.gov.in/hcservices/> (i) Crime No.54 of 2015 registered on the file of Patteswaram Police Station for offences punishable under Sections 147, 148, 341 and 302 of



the Indian Penal Code;

(ii) Crime No.298 of 2015 registered on the file of Valangaiman Police Station for offences punishable under Sections 294(b), 323, 324 and 307 of the Indian Penal Code;

(iii) Crime No.277 of 2015 registered on the file of Papanasam Police Station for offences punishable under Sections 294(b), 506(ii), 392 of the Indian Penal Code r/w 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 (amended 1994); and

(iv) Crime No.1599 of 2015 registered on the file of Madurai City E.3 Anna Nagar Police Station for offences punishable under Sections 147, 148, 506 (ii) and 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 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.221, Home, Prohibition and Excise(XVI) Department, dated 18.10.2015 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 C.O.C.28/2015 dated 31.10.2015, by the second respondent, the District Collector and District Magistrate, Tiruvarur District, Tiruvarur and directs the release of the detenu by name Arun @ Punarselvam S/o.Maruthamuthu, aged about 28 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

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Tiruvarur District,
Tiruvarur.
3. The Superintendent,
Central Prison, Tiruchirapalli.
(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.K.M.Karunakaran, Advocate SR.No.1559

akm/11.01.2016/3p-8c/MP/PM/SAR-I

Order made in
H.C.P (MD) No.1586 of 2015
Dated:- 07.01.2016