



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1606 of 2015

Ponnu Pillai

.. Petitioner

Vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
State of Tamilnadu,
Secretariat, Chennai - 600 009.

2. The Commissioner of Police,
O/o.Commissioner of Police,
Madurai City, Madurai.

3. The Superintendent of Prison,
Borstal School
Pudhukottai,
Pudhukottai District.

.. 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 second respondent in No.150/BCDFGISSSV/2015 dated 13.11.2015 and quash the same and direct the respondents to produce the detenu namely Karthik @ Andang karthik, S/o.Sangaiah aged about 20 years detained in Borstal School, Pudukottai 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]

The petitioner is the mother of the detenu namely Karthik @ Andang karthik, S/o.Sangaiah. The detenu has been detained by the second respondent by his order in No.150/BCDFGISSSV/2015, dated 13.11.2015, 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.888 of 2015 registered on the file of E2 Madhichiam Police Station for offences punishable under Sections 147, 148 and 302 of the Indian Penal Code, subsequently altered to Sections 147, 148, 341, 392, 506(ii) and 302 of the Indian Penal Code r/w Section 34 and 397 of the Indian Penal Code and the following two adverse cases:-



"(i)Crime No.1570 of 2014 registered on the file of E3 Anna Nagar Police Station for offences punishable under Sections 395 r/w 397 and 506(ii) of the Indian Penal Code; and

(ii)Crime No.788 of 2015 registered on the file of E2 Machichiyam Police Station for offences punishable under Sections 392 r/w 397 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 by the non-supply of a copy of the Government Order extending the delegation of power to the Detaining Authority. The failure to supply a copy of the Government Order even after a representation was made in writing seeking supply of the same amounts to denial of reasonable opportunity vitiating the order of detention itself. "

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. So far as the contention of the learned counsel for the petitioner regarding the 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, which has been referred to in the detention order, has not been furnished to the detenu and the denial of supply of copy of the Government Order has also been clearly mentioned in the counter affidavit at paragraph (r). 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 alone, 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 13.11.2015, made in No.150/BCDFGISSSV/2015, by the second respondent, the Commissioner of Police, Madurai City, Madurai and directs the release of the detenu by name Karthik @ Andang karthik, S/o.Sangaiah, aged about 20 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (Crl.side)

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
State of Tamilnadu,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
O/o.Commissioner of Police,
Madurai City, Madurai.
3. The Superintendent of Prison,
Borstal School
Pudhukottai,
Pudhukottai District.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St.George, Chennai - 9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P (MD) No.1606 of 2015
11.01.2016

mj

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