



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2016

CORAM

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P.(MD)No.1608 of 2015

Tamilselvan

..Petitioner

Vs

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

2.The Commissioner of Police,
Madurai City.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

..Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the Respondent No.2 in No.146/BCDFGISSSV/2015, dated 05.11.2015 and quash the same and direct the respondents to produce the body or person of the detenu, by name Tamilselvan, S/o.Kubendran, aged about 27 years, now detained in Madurai Central Prison, 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 has been detained by the second respondent by his order in No.146/BCDFGISSSV/2015, dated 05.11.2015, 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.776 of 2015, registered on the file of C5 Karimedu Police Station, for offences punishable under Sections 302 IPC @ 147, 148, 120(B), 341, 324, 506(ii) and 302 IPC and the following one adverse case:-

(i). Crime No.99 of 2013 registered on the file of C5 Karimedu Police Station for offences punishable under Sections 120(B), 147, 148, 341, 342, 302 r/w 34 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 said 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 more grounds, the learned counsel for the petitioner mainly relies on the contention that there is a delay in communicating the order of approval passed by the Government approving the order of detention made by the detaining authority and such delay, which is more than nine days, will vitiate the order itself, besides denying a reasonable opportunity to make an effective representation or to effectively challenge the order of detention.

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

5. The order of detention was passed on 05.11.2015. Since the order came to be passed by the second respondent, it has got to be approved within 12 days thereafter. Of course, it is true that the detention order came to be approved by the Government in G.O.(Rt) No.7233, Home, Prohibition and Excise Department, dated 16.11.2015. The order of approval was communicated to the detenu only on 26.11.2015 through the Additional Superintendent of Central Prison, Madurai. According to the contention of the learned counsel for the petitioner, the delay in communicating the approval order would vitiate the order of detention, as the delay would amount to denial of reasonable opportunity to make an effective representation or to challenge the order in an effective manner.

6. The learned Additional Public Prosecutor would contend that since it was specifically mentioned in the grounds of detention that the order of detention would cease to have force if it is not approved by the Government within a period of 12 days, the detenu should have presumed that his custody was in pursuance of the order of approval made by the Government within 12 days and that hence the non-service of the order of approval will not vitiate the order of detention.

7. We are unable to accept the above said contention of the learned Additional Public Prosecutor. The contention raised by the learned counsel for the petitioner is that the failure to communicate the approval order without delay amounted to denial of reasonable opportunity of making an effective representation against the order of detention and of challenging the order of detention in an effective manner. The said contention does not stand met with by the above contention raised by the learned Additional Public Prosecutor. Hence, we are constrained to reject the above contention of the learned Additional Public Prosecutor and sustain the contention of the learned counsel for the petitioner. On that ground alone, the order of detention is liable to be interfered with and set aside.

8. Accordingly, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 05.11.2015, made in No.146/BCDFGISSSV/2015, passed by the second respondent, the Commissioner of Police, Madurai City and directs the release of the detenu, by name Tamilselvan, aged about 27 years, S/o.Kubendran forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(RTI)



To

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

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

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Alagumani, Advocate in SR.524

H.C.P. (MD) No.1608 of 2015
04.01.2016

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PBK/GSV-AN 18.01.2016 ::3P-6C: