



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2016

CORAM:

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

H.C.P (MD) No.1649 of 2015

Saibu Nisha

.. Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Govt. of Tamil Nadu, Home, Prohibition &
Excise Department, Chennai-9.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records pertaining to the proceedings of the second respondent made in his proceedings No.139/BCDFGISSSV/2015, dated 30.10.2015 and quash the same and set the petitioner's husband by name "Rabeek @ Vazhaikai Rabeek @ Rabeek Raja, S/o.Sulthan Alavudeen, aged about 39 years" at liberty from Central Prison, Madurai.

For Petitioner
For Respondents

: Mr.M.Jegadeesh Pandian
: Mr.A.Ramar
Additional Public Prosecutor

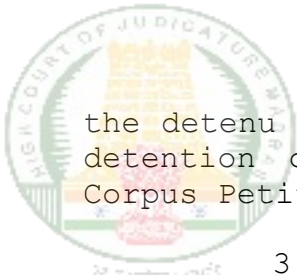
O R D E R

[Order of the Court was made by P.R.SHIVAKUMAR, J.]

The petitioner is the wife of the detenu - Rabeek @ Vazhaikai Rabeek @ Rabeek Raja, S/o.Sulthan Alavudeen, aged about 39 years. The detenu has been detained by the second respondent by his order in No.139/BCDFGISSSV/2015, dated 30.10.2015, 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.803 of 2015 registered on the file of B1 Vilakkuthoon Police Station for offences punishable under Sections 147, 148, 302 of the Indian Penal Code and Section 3 of the Explosive Substances Act 1908 and the following one adverse case:-

(i). Crime No.56 of 2014 registered on the file of B1 Vilakkuthoon Police Station, for offences punishable under Sections 341, 302 and 506 (ii) of the Indian Penal Code r/w 34 of the Indian Penal Code.

2. The Detaining Authority, expressing subjective satisfaction that the petitioner's husband 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 mainly relies on the contention that a material document was not placed for the perusal of the Detaining Authority and a copy of the same was not supplied to the detenu. It is the further contention of the learned counsel for the petitioner that though the ground case was registered for offences punishable under Sections 147, 148, 302 of the Indian Penal Code and Section 3 of the Explosive Substances Act 1908, it came to be altered into a case for offences punishable under Sections 147, 148, 302, 120-B [wrongly mentioned as "120(b)"], 109, 201, 212 of the Indian Penal Code and Section 3 of the Explosive Substances Act 1908, long back on 04.08.2015, by an alteration report which was received by the concerned Magistrate on 05.08.2015. The said development by way of alteration of the case by including four more penal provisions under the Indian Penal Code was not brought to the notice of the Detaining Authority and the Detaining Authority failed to consider the relevant material, because the same was not placed before him.

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 grounds of detention and the booklet supplied to the detenu make it clear that the alteration of the case was made more than two months prior to the passing of the order of detention and the same was not placed before the Detaining Authority. The failure to place a relevant material, which goes to the root of the case, as rightly contented by the learned counsel for the petitioner, will vitiate the proceedings. In addition, non-supply of the same along with the booklet caused prejudice to the detenu, as he was crippled from making effective representation against the order of detention or effectively challenging the order of detention. Hence, 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 30.10.2015 made in No.139/BCDFGISSSV/2015, passed by the second respondent, the Commissioner of Police, Madurai City and directs the release of the detenu, by name Rabeek @ Vazhaikai Rabeek @ Rabeek Raja, aged about 39 years, S/o.Sulthan Alavudeen 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,
State of Tamil Nadu,
Govt. of Tamil Nadu, Home, Prohibition &
Excise Department, Chennai-9.
2. The Commissioner of Police,
Madurai City,
Madurai.
3. The Superintendent
Central Prison, Madurai.
(In duplicate for communication to detenu)
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.

ORDER MADE IN
H.C.P (MD) No.1649 of 2015
12.01.2016

+1 CC to Mr.M.Jegadeesh Pandian, Advocate, SR No.2265/16

NB

SH/SKS-RR:01.02.2016:3P/8C