



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.1659 of 2015

Raziya Begum

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Magistrate and District Collector,
Velunachiar Valagam, Dindigul.

3.The Inspector of Police,
Town North Police Station,
Dindigul.

.. 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 in detention order No.79/2015 dated 14.11.2015 on the file of the second respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son M.Mubarak Ali S/o.Mohammed Mohideen aged about 30 years now confined at Central Prison, Madurai before this court and set him at liberty forthwith.

For Petitioner

: Mr.S.M.A.Jinnah

For Respondents

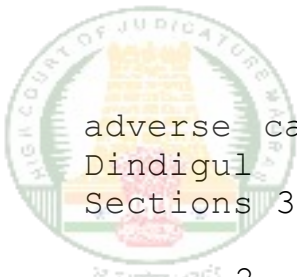
: Mr.A.Ramar

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. The detenu has been detained by the second respondent by his order in Detention Order No.79/2015, dated 14.11.2015, 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.1242 of 2015 registered on the file of Dindigul Town North Police Station for offences punishable under Sections 147, 148, 341, 506(ii) and 307 of the Indian Penal Code and also under Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 and the



adverse case in Crime No.655 of 2015 registered on the file of Dindigul West Police Station for offences punishable under Sections 387 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 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.

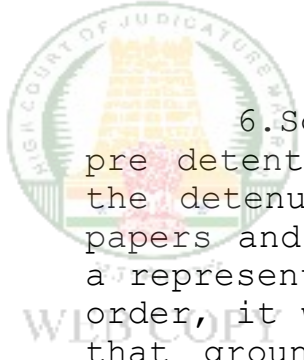
3. Though a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the following contentions:-

(i) The subjective satisfaction of the detaining authority regarding the imminent possibility of the detenu coming out on bail in the ground case namely Crime No.1242 of 2015 registered on the file of Dindigul Town North Police Station is nothing but *ipse dixit*, not supported by cogent materials.

(ii) The pre-detention representation made on behalf of the detenu was not at all adverted to by the detaining authority in the grounds 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. In paragraph - 5 of the grounds of detention, after referring to the fact that the detenu Mubarak Ali was in remand in connection with the adverse case, namely Crime No.655 of 2015 registered on the file of Dindigul West Police Station, and the ground case namely Crime No.1242 of 2015 registered on the file of Dindigul Town North Police Station and the further fact that the bail application filed in the ground case was pending before the Principal Sessions Judge, Dindigul in Cr.M.P.No.2906 of 2015, the detaining authority abruptly expressed his subjective satisfaction that because of the pendency of the bail application, there was real possibility of the detenu coming out on bail in the ground case. In fact, when the remand in the adverse case was also taken note of, no subjective satisfaction regarding the real possibility of the detenu coming out on bail in the adverse case came to be expressed by the detaining authority. So far as the subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case is concerned, the subjective satisfaction expressed by the detaining authority is not supported by cogent materials and no similar case particulars have been
~~Source: <https://hccorpusonline.in/hccorpus>~~ as rightly contended by the learned counsel for the petitioner, the same may be termed as *ipse dixit*.



6. So far as the second contention is concerned, the copy of pre detention representation sent by the petitioner on behalf of the detenu on 03.11.2015 has been included in the typed set of papers and receipt of the same has not been disputed. Though such a representation came to be made prior to passing of the detention order, it was not adverted to by the detaining authority. Hence on that ground also the detention order is vitiated. On both the grounds, the order of detention is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 14.11.2015, made in Detention Order No.79/2015, by the second respondent, the District Magistrate and District Collector, Velunachiar Valagam, Dindigul and directs the release of the detenu by name M.Mubarak Ali S/o.Mohammed Mohideen aged about 30 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Velunachiar Valagam, Dindigul.
- 3.The Inspector of Police,
Town North Police Station, Dindigul.
- 4.The Superintendent, Central Prison, Madurai
- 5.The Joint Secretary to Government,
Public(Law and Order) Department,
Fort Saint George, Chennai-9
- 6.The Commissioner of Police, Dinidgul District
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

mj

RL/8C/SKS/RR/21/1/2016

H.C.P (MD) No.1659 of 2015

04.01.2016