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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.1686 of 2015

Karthick

.. Petitioner

Vs.

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

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

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai 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.164/BCDFGISSSV/2015 dated 24.11.2015 and quash the same and direct the Respondents to produce the detenu namely Karthick S/o. Sankar aged about 27 years 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.164/BCDFGISSSV/2015 dated 24.11.2015, 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.1050 of 2015 registered on the file of B6 Jaihindpuram Police Station for offences punishable under Sections 392 r/w 397 and 506(ii) of the Indian Penal Code and the following two adverse cases:-

(i) Crime No.108 of 2015 registered on the file of B6, Jaihindpuram Police Station for offences punishable under Sections 392 r/w 397 and 506(ii) of the Indian Penal Code; and



(ii) Crime No.81 of 2015 registered on the file of C4 Othakadai Police Station for offences punishable under Sections 302 and 201 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.

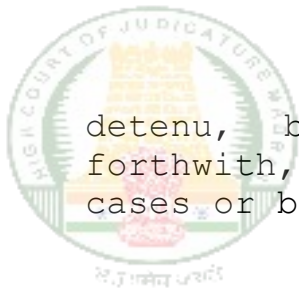
3. Though a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the following contention:-

"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. 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 the Order of Detention dated 24.11.2015, made in No.164/BCDFGISSSV/2015, by the second respondent, the Commissioner of Police, Madurai, is set aside and directs the release of the



detenu, by name Karthick S/o.Sankar, aged about 27 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

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/True Copy/

Sd/-

Assistant Registrar (AS)

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government,
Public (Law and Order) Department,
Fort Saint George, Chennai-9
- 5.The District Collector and Magistrate, Madurai
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.R.Alagumani, Advocate, SR.No.519

mj

RL/8C/NGM/SS/25/1/2016

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04.01.2016