



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2016

CORAM:

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

H.C.P (MD) No.1700 of 2015

Vanmathi

.. Petitioner

Vs.

- 1.The State, Rep by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The Deputy Inspector General of Police,
Tirunelveli Range and Office of the Commissioner of Police,
Tirunelveli City, [Full Additional Charge],
Tirunelveli.
- 3.The Inspector of Police,
Melapalayam Police Station,
Tirunelveli City.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus directing the respondents herein to produce the detenu M.Ramachandran alias Chandru, aged 26 years, S/o.Madasamy Thevar, who has been termed as "Goonda" who is now detained at Central Prison, Palayamkottai and call for the records relating to the detention order in No.74/BCDFGISSSV/2015, dated 15.10.2015, passed by the second respondent herein and set aside the same and set the detenu at liberty.

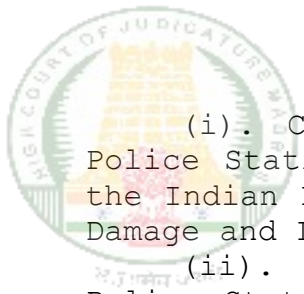
For petitioner : Mr.K.Mahendran

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 wife of the detenu. He has been detained by the second respondent by his order in Detention Order No.74/BCDFGISSSV/2015, dated 15.10.2015, 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.421 of 2015 registered on the file of Melapalayam Police Station for offences punishable under Sections 341, 294(b), 387, 307 and 506(ii) of the Indian Penal Code and the following three adverse cases:-



(i). Crime No.324 of 2014 registered on the file of Melapalayam Police Station for offences punishable under Sections 294(b), 506(ii) of the Indian Penal Code r/w Section 3 of Tamil Nadu Property [Prevention of Damage and Loss] Act 1992;

(ii). Crime No.77 of 2015 registered on the file of Melapalayam Police Station for offences punishable under Sections 452, 147, 148, 294(b), 324, 326, 307, 506(ii) and 109 of the Indian Penal Code r/w Section 149 of the Indian Penal Code; and

(iii). Crime No.406 of 2015 registered on the file of Melapalayam Police Station for offences punishable under Sections 452, 294(b), 352 and 506(ii) of the Indian Penal Code r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002.

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 this Court sets aside the Order of Detention dated 15.10.2015, made in 74/BCDFGISSSV/2015, passed by the second respondent, the Deputy Inspector General of Police, Tirunelveli Range and the Commissioner of Police,



Tirunelveli City, [Full Additional Charge], Tirunelveli and directs the release of the detenu, by name M.Ramachandran alias Chandru, aged about 26 years, S/o.Madasamy Thevar forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(Crl.side)

WEB COPY/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The Deputy Inspector General of Police,
Tirunelveli Range and Office of the Commissioner of Police,
Tirunelveli City, [Full Additional Charge],
Tirunelveli.
- 3.The Superintendent, Central Prison, Palayamkottai
(in duplicate for communication to detenu)
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George, Chennai-9.
- 5.The Inspector of Police,
Melapalayam Police Station,
Tirunelveli City.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.M.S.Jeyakarthik, Advocate SR.No.505

ORDER MADE IN
H.C.P (MD) No.1700 of 2015

05.01.2016

NB

NS/SKS-RR/21.01.2016 : 3P/8C