



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1718 of 2015

Kaleeswari

..Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
State of Tamil Nadu,
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.163/BCDFGISSSV/2015, dated 23.11.2015 and quash the same and direct the respondents to produce the detenu viz., Murugan @ 'Load' Murugan S/o.Ganesan, aged about 31 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 wife of the detenu viz., Murugan @ 'Load' Murugan S/o.Ganesan, aged about 31 years. The detenu has been detained by the second respondent by his order in Detention Order No.141/BCDFGISSSV/2015, dated 23.11.2015, 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.797 of 2015 registered on the file of E1 K.Pudur Police Station for offences punishable under Sections 392 r/w 397 and 506(ii) of the Indian Penal Code and the adverse case in Crime No.591 of 2015 registered on the file of D.2 Sellur Police Station for offences punishable under Sections 147, 148, 302 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 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 a number of grounds raised in the affidavit filed in support of the Habeas Corpus Petition, the learned counsel for the petitioner gives up the other grounds and confines his arguments on the following ground alone:-

"Any pre-detention representation made by or on behalf of the detenu should have been reflected in the grounds of detention to show the application of mind by the Detaining Authority to the same. The petitioner, namely, the father of the detenu, submitted a pre-detention representation dated 21.09.2015 to the Detaining Authority stating that there was an illegal detention without any authority of law. Despite the fact that such a pre-detention representation was received by the Detaining Authority, the same was not reflected in the grounds of detention. It has also not been included in the Booklet to show that the same was considered by the Detaining Authority. The non-consideration of the pre-detention representation will vitiate the order of detention."

4. We also heard the submissions made by the learned Additional Public Prosecutor on the above said contention raised on behalf of the petitioner.

5.The learned counsel for the petitioner cited the Judgment of a Division Bench of this Court in Chandra Vs. Secretary to Government, reported in 2010 (2) MLJ (Cr1) 1038, of which one of us [P.R.SHIVAKUMAR] was a party, in support his contention that the non-consideration of the pre-detention representation will amount to non-consideration of a relevant material vitiating the order of detention. Referring to the earlier Judgment of the Madras High Court in Uma Maheswari Vs. Secretary to Government, reported in 2009 3 MLJ (Cr1) 449, it was held therein that the non-consideration of the pre-detention representation vitiated the order of detention therein. The relevant passage from the said Judgment is extracted hereunder:-

"13. The next contention raised on behalf of the petitioners is that the detention orders are vitiated for non-consideration of relevant materials that may amount to pre-detention representation. In this regard the learned counsel for the petitioners relied on a decision of a Division Bench of this court in D.Uma Maheswari v. Secretary to Government, Prohibition and Excise Department, Government of Tamil Nadu, Fort St. George, Chennai-9 and Another reported in (2009) 3 MLJ (Cr1) 469 in which it has been held, "non-consideration of pre-detention representation would affect order of detention since it has caused prejudice to the interest of detenu."

All the detenues, according to the respondents, were arrested on 24.11.2009 and produced before the Magistrate on 25.11.2009 whereupon they were remanded to judicial



custody in the ground case as well as the adverse cases. However, there was an allegation made even prior to the passing of the order of detention that the detenu Murali was taken into custody by the police on 18.11.2009 itself and was being kept in illegal custody. A telegram was sent to the second respondent (detaining authority) on behalf of the detenu Murali on 20.11.2009 itself. The said telegram was not referred to and was not at all considered by the detaining authority. There is no reference to the said telegram or to the allegation made on behalf of the detenu Murali that he was kept in illegal custody by the police from 18.11.2009. In addition to the said telegram, there is an averment found in the affidavit filed in a previous HCP, namely H.C.P.No.2097/2009, alleging illegal detention without an order of remand by the Magistrate or any preventive detention order. The respondents in the said HCP, informed the court that the detenus were arrested on 24.11.2009 and remanded to judicial custody on 25.11.2009. Only based on the said representation that the detenus were remanded to judicial custody on 25.11.2009, the previous HCP filed by the wife of the detenu Murali, namely H.C.P.No.2097/2009 was closed. The said order was passed on 30.11.2009 in the above said HCP by a division bench of this court. The impugned orders of detention came to be passed on 14.12.2009, i.e. 14 days after the date of the said disposal of the previous HCP. As such pre-detention representation in the form of telegram sent on 20.11.2009 and the averment made in the affidavit filed in the previous HCP (H.C.P.No.2097/2009) ought to have been taken into consideration by the detaining authority before passing orders of detention. The detaining authority failed to make any reference to the said pre-detention representation. In this regard, we are in complete agreement with the view expressed by the earlier division bench in the order cited by the learned counsel for the petitioners and referred to supra. Therefore, this court is convinced with the contention raised on behalf of the petitioners that the non-consideration of the above said pre-detention representation would vitiate the order of detention".

7. In the case on hand, the copy of pre-detention representation sent by the father of the detenu on 21.09.2015 has been included in the typed set of papers. The postal receipts and delivery reports have also been included in the typed set of papers. The receipt of the same has not been disputed by the respondents. 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, as rightly contended by the learned counsel for the petitioner, the non-consideration of the pre-detention representation will vitiate the order of detention. On that ground, the order of detention is liable to be set aside.

8. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 23.11.2015, made in 163/BCDFGISSSV/2015, passed by the second respondent, the Commissioner of Police, Office of the Commissioner of Police, Madurai City, Madurai and



directs the release of the detenu, by name Murugan @ "Load" Murugan S/o.Ganesan, aged about 31 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(RTI)

/True copy/

WEB COPY

Sub Assistant Registrar(CS)

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

+1cc to Mr.R.Alagumani, Advocate in SR.1636

H.C.P (MD) No.1718 of 2015
07.01.2016

GCG

PBK/AAL-MPA/SAR-II 11.01.2016 ::4P-6C: