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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.01.2016

CORAM:

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

H.C.P(MD)No.1731 of 2015

Murugan

.. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
O/o.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 calling for the entire records connected with the detention order of the second respondent in No.168/BCDFGISSSV/2015 dated 27.11.2015 and quash the same and direct the respondents to produce the body or person of the detenu namely Murugan S/o.Pachaimal aged about 26 years now detained in Madurai Central Prison before this Court and set him at liberty forthwith.

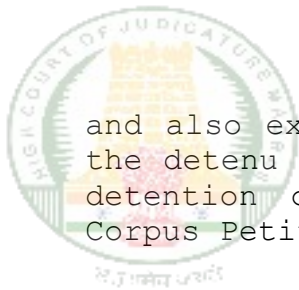
For Petitioner	: Mr.R.Alagumani
For Respondents	: Mr.A.Ramar
	Additional Public Prosecutor

O R D E R

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

The petitioner is the detenu. He has been detained by the second respondent by his order in No.168/BCDFGISSSV/2015, dated 27.11.2015, 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.1187 of 2015 registered on the file of V2 Avaniyapuram Police Station for offences punishable under Sections 294(b), 392 r/w 397 and 506(ii) of the Indian Penal Code and Section 3(1) of Tamilnadu Property (Prevention of Damage and Loss) Act and the adverse case in Crime No.1009 of 2014 registered on the file of D3 Avaniyapuram Police Station for offences punishable under Sections 147, 148, 324 and 302 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 contentions:-

(i) 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.

(ii) There is a delay in communicating the order of approval passed by the Government approving the order of detention made by the detaining authority and such delay, which is more than eleven days, will vitiate the order itself, besides denying a reasonable opportunity to make an effective representation or to effectively challenge the order 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. 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, the order of detention is liable to be set aside.

6. So far as the second contention of the learned counsel for the petitioner regarding the delay in communicating the order of approval is concerned, the order of detention was passed on 27.11.2015. Since the order came to be passed by the second respondent, it has got to be approved within 12 days thereafter. Of course, it is true that the detention order came to be approved by the Government in G.O.(Rt) No.8088, Home, Prohibition and Excise (IX) Department, dated 08.12.2015. The order of approval was communicated to the detenu only on 19.12.2015 through the Additional Superintendent of Central Prison, Madurai. According to the contention of the learned counsel for the petitioner, the delay in communicating the approval order would vitiate the order of detention, as the delay would amount to denial of reasonable opportunity



to make an effective representation or to challenge the order in an effective manner.

7. The learned Additional Public Prosecutor would contend that since it was specifically mentioned in the grounds of detention that the order of detention would cease to have force if it is not approved by the Government within a period of 12 days, the detenu should have presumed that his custody was in pursuance of the order of approval made by the Government within 12 days and that hence the non-service of the order of approval will not vitiate the order of detention.

8. We are unable to accept the above said contention of the learned Additional Public Prosecutor. The contention raised by the learned counsel for the petitioner is that the failure to communicate the approval order without delay amounted to denial of reasonable opportunity of making an effective representation against the order of detention and of challenging the order of detention in an effective manner. The said contention does not stand met with by the above contention raised by the learned Additional Public Prosecutor. Hence, we are constrained to reject the above contention of the learned Additional Public Prosecutor and sustain the contention of the learned counsel for the petitioner. On that ground also, the order of detention is liable to be interfered with and set aside. On both the grounds, the order of detention is liable to be set aside.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 27.11.2015, made in No.168/BCDFGISSSV/2015, by the second respondent, Commissioner of Police, Madurai City, Madurai and directs the release of the detenu by name Murugan S/o.Pachaimal, aged about 26 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Police,
O/o. Commissioner of Police,
Madurai City, Madurai.



3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

(in duplicate for communication to Detenu)

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4.The Joint Secretary to Government
Public (Law & Order)
Saint George Fort, Chennai-600 009.

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

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