



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1734 of 2015

Chandra

.. Petitioner

Vs.

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
 - 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruchirappalli
 - 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli
- .. 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 Cr.M.P.No.35 of 2015, dated 23.11.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Pandi @ Pandian, S/o.Reghunathan, aged about 23 years, now detained at Trichy 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 mother of the detenu - Pandi @ Pandian, S/o.Reghunathan, aged about 23 years. The detenu has been detained by the second respondent by his order in Detention Order No.Cr.M.P.No.35 of 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.605 of 2015 registered on the file of Tiruverumbur Police Station for an offence punishable under Section 392 of the Indian Penal Code and the following three adverse cases:-



(i). Crime No.772 of 2012 registered on the file of Tiruverumbur Police Station, Tiruchy District for an offence punishable under Section 379 of the Indian Penal Code;

(ii). Crime No.301 of 2012 registered on the file of Thuvakudi Police Station, Tiruchy District for an offence punishable under Section 392 of the Indian Penal Code; and

(iii). Crime No.97 of 2015 registered on the file of Tiruverumbur Police Station, Tiruchy District for offences punishable under Sections 457 and 380 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 contention that there is total non-application of mind on the part of the Detaining Authority in referring to a bail order dated 05.08.2015 made in Cr.MP.No.4923 of 2015 on the file of the learned Judicial Magistrate No.IV, Trichirappalli as the bail order granted in favour of another person to base the subjective satisfaction of the Detaining Authority, regarding the imminent possibility of the detenu coming out on bail in the ground case. The learned counsel for the petitioner points out that the said order in fact was one of dismissal of the bail application and the same was wrongly cited by the Detaining Authority as an order granting bail.

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. For better appreciation, the relevant portion found in Paragraph No.5 of the the grounds of detention is reproduced hereunder:-

"I am aware that Thiru Pandi alias Pandian is in remand in Tiruverumbur Police Station Cr.No.605/2015 and has filed any bail petition before the Principal District and Sessions Court, Tiruchirappalli in Cr.MP.No.3017 of 2015 and the same is pending. In a similar case registered in Tiruchirappalli City Woraiyur PS Cr.No.272/2015 u/s 392 IPC bail was granted to the accused Khader Moideen who was remanded on 26.06.2015 by the Judicial Magistrate No.IV, Tiruchirappalli in Cr.MP.No.4923 of 2015, dated 05.08.2015. Hence, there is real possibility of his [Pandi alias Pandian] coming out on bail".



6. A perusal of the of above extracted portion, it is quite obvious that the said bail petition in Cr.MP.No.4923 of 2015 was allowed and bail was granted.

7. The operative portion of the bail order, a copy of which is available at Page Nos.131 and 132 of the booklet, is extracted hereunder:-

"Hence, the bail application of the petitioner/accused is dismissed hereby".

8. On perusal of the said order, it is clear that the bail petition in Cr.MP.No.4923 of 2015 was dismissed and not allowed. Referring to a bail petition dismissed as an instance of bail granted to another person placed in similar situation shows total non-application of mind and mechanical signing of the order of detention. On that ground alone, 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 23.11.2015, made in Cr.M.P.No.35 of 2015, passed by the second respondent, the District Collector and District Magistrate, Trichirappalli District and directs the release of the detenu, by name Pandi @ Pandian, aged about 23 years, S/o.Raghunathan 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 Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tiruchirappalli
- 3.The Superintendent of Prison,
Central Prison, Tiruchirappalli
- 4.The Joint Secretary to Government,
Public (Law and Order) Department, Chennai-9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

NB

RL/6C/AAL/MPA/1/2/2016

ORDER MADE IN
H.C.P (MD) No.1734 of 2015