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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1744 of 2015

Najma Ayisha

... Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort.St.George,
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.169/BCDFGISSSV/2015, dated 30.11.2015 and quash the same and direct the respondents to produce the detenu by name Sultan Batcha S/o.Mohammed Ghouse Batcha, aged about 33 years, now detained in Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner
For Respondents

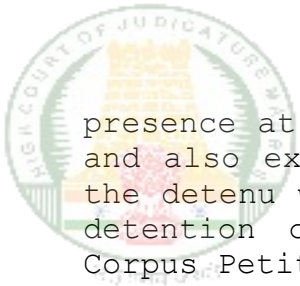
: Mr.R.Alagumani
: Mr.A.Ramar
Additional Public Prosecutor

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., Sultan Batcha S/o.Mohammed Ghouse Batcha. The detenu has been detained by the second respondent by his order in Detention Order No.169/BCDFGISSSV/2015, dated 30.11.2015, 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.859 of 2015 registered on the file of C.5 Karimedu Police Station for offences under Section 3 of the Explosive substances Act, 1908 and Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

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.

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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. Non-furnishing of copy of the G.O. has also been mentioned in para (t) of the counter affidavit. 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 30.11.2015, made in No.169/BCDFGISSSV/2015, by the second respondent / the Commissioner of Police, Madurai City, Madurai and directs the release of the detenu by name Sultan Batcha S/o.Mohammed Ghouse Batcha, aged about 33 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar



To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort.St.George,
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.
(In duplicate for communication to detenu)
4. The Joint Secretary to Government,
Public (Law & Order)
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.ALAGUMANI, Advocate, SR No.4027

ORDER MADE IN
H.C.P (MD) No.1744 of 2015
Dated:21.01.2016

gcg

SH/PM-MP:02.02.2016:3P/8C