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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.1764 of 2015

Allapitchai

.. 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 cum District Judicial Magistrate,
Office of the District Collector and District
Magistrate, Ramanathapuram District,
Ramanathapuram.

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records relating to the impugned detention order passed by second respondent in Cr.M.P.No.27/D.O./2015, dated 09.12.2015 and quash the same and direct the respondents to produce the body or person of the detenu viz., Allapitchai S/o.Mohamed Abdul Kadar, aged about 38 years, now detained in Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

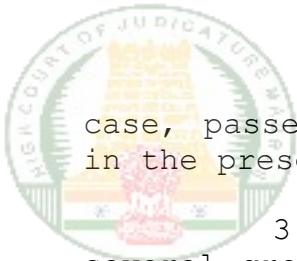
For Respondents : Mr.A.Ramar,
Additional Public Prosecutor.

O R D E R

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

The petitioner is the detenu. He has been detained by the second respondent by his Detention Order in Cr.M.P.No.27/D.O./2015, dated 09.12.2015, holding him to be a "Drug Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.81 of 2015 registered on the file of Ramanathapuram NIB CID Unit for offences punishable under Sections 8(C) r/w 20(B)(ii)(c) of NDPS Act.

2.The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Drug Offender" and that his presence at large would be prejudicial to the maintenance of public order and public health, 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 sought to be assailed on several grounds, the learned counsel for the petitioner primarily relies on the following contention:

“Non application of mind on the part of the detaining authority is writ large insofar as he has referred to an order of dismissal of a bail application in a similar case as an order granting bail, to infer the real possibility of the detenu coming out on bail in the ground case. The same also indicates the pre-determination and mechanical passing of the order of detention.”

4. The submissions of the learned Additional Public Prosecutor on the above contention of the learned counsel for the petitioner are heard.

5. The detaining authority in paragraph No.5 of the grounds of detention referred to an order dated 18.08.2015 made in CrI.O.P.(MD). No.14188 of 2015 passed by the Madurai Bench of Madras High Court as the bail order granted in a similar case, to express subjective satisfaction of the real possibility of the detenu coming out on bail in the ground case. The learned counsel for the petitioner draws our attention to the copy of the said order found at page Nos.70 and 71 of the booklet supplied to the detenu. Accused Nos.1 and 2 viz., Dharmendran and Deepa respectively, in Crime No.44 of 2015 on the file of NIB CID Ramanathapuram, had filed the above said bail petition in CrI.O.P.(MD). No.14188 of 2015 and a learned Single Judge of this Court (Hon'ble Justice K.Kalyanasundaram) passed an order in the said petition on 18.08.2015 dismissing the said petition. The detaining authority referred to the said order as the one granting bail. The very fact that an order of dismissal of the bail petition has been cited as an order granting bail will show non application of mind on the part of the detaining authority and mechanical signing of the order of detention prepared by his subordinates. 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 09.12.2015, made in Cr.M.P.No.27/D.O./2015, by the second respondent / the District Collector and District Magistrate, Ramanathapuram District, Ramanathapuram and directs the release of the detenu by name Allapitchai S/o.Mohamed Abdul Kadar, aged about 38 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention..

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,

https://hcservices.courts.gov.in/hcservices/1
Department of Revenue and Excise Department,
Fort St. George, Chennai - 600 009.



2.The District Collector cum District Judicial Magistrate,
Office of the District Collector and District
Magistrate, Ramanathapuram District,
Ramanathapuram.

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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),
Fort Saint George, Chennai-09.

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

+1cc to Mr.R.Alagumani, Advocate SR.No.4028

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ORDER MADE IN
H.C.P (MD) No.1764 of 2015
21.01.2016