

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 17.05.2016****Coram****THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE B.GOKULDAS****H.C.P(MD)No.114 of 2016**

Ayyappan

.. Petitioner

Vs.

1.State of Tamil Nadu, rep by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George,
Chennai-9.

2.The District Collector and
District Magistrate,
O/o.The District Collector and
District Magistrate,
Pudukkottai District,
Pudukkottai.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

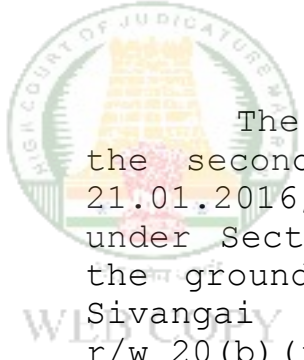
.. Respondents

Prayer:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus praying to call for the entire records in detention order passed in P.D.O.No.01/2016, dated 21.01.2016 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Ayyappan, S/o.Periyasamy, Male, aged 35 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.C.Ramesh
Additional Public Prosecutor**O R D E R**

Order of the Court was made by **M.V.MURALIDARAN, J. and
B.GOKULDAS, J.]**



The petitioner is the detenu. The detenu was detained by the second respondent by his order in P.D.O.No.01/2016, dated 21.01.2016, holding him to be a "Durg Offender", as contemplated under Section 2(e) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Cr.No.58 of 2015 on the file of NIB CID, Sivangai registered for offences punishable under Sections 8(c) r/w 20(b) (ii) (C) and 29(i), 25 of NDPS Act.

2.The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of the "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.

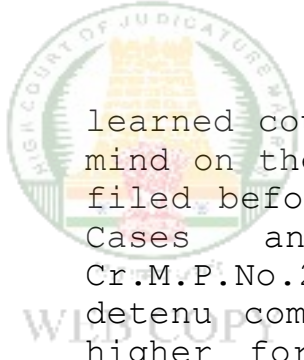
3.Though a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the contention that the subjective satisfaction expressed by the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case is *ipse dixit* not supported by cogent materials insofar as it does not refer to any similar case particulars.

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. The Detaining Authority, in the grounds of detention, while expressing subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case made the following observations:-

"I am also aware that Thiru.Ayyappan who is in remand in NIB CID, Sivagangai Crime No.58/2015 for offences under Section 8(c) read with 20(b) (ii) (C) and 29(i), 25 of NDPS Act has filed bail petition before the Additional District and Special Court for E.C Act Cases and NDPS Act Cases, Pudukkottai, vide Cr.M.P.No.2051/2015 and the same was dismissed on 08.01.2016. On enquiring, his relatives are taking steps to release him on bail, if the accused Thiru.Ayyappan is coming out freely, there is a possibility of danger to the life and safety of public health of youths and general public, it is necessary to detain as Goonda."

6. The above said observation, as rightly contended by the



learned counsel for the petitioner, shows the pre-determination of mind on the part of the Detaining Authority that the bail petition filed before the Additional District and Special Court for EC Act Cases and NDPS Cases, Pudukkottai was dismissed in Cr.M.P.No.2051/2015 and that there is a real possibility of the detenu coming out on bail by filing a bail petition before the higher forum. On that score alone, the order of detention is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 21.01.2016 made in P.D.O.No.01/2016 by the second respondent, the District Magistrate and District Collector, Pudukkottai District, Pudukkottai and directs the release of the detenu by name Ayyappan, S/o.Periyasamy, aged about 35 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/
Assistant Registrar(V.O)

/True copy/

Sub Assistant Registrar

To

- 1.State of Tamil Nadu, rep by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George, Chennai-9.
- 2.The District Collector and
District Magistrate,
O/o.The District Collector and
District Magistrate,
Pudukkottai District,
- 3.The Superintendent,
Central Prison, Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order), Fort St., George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SDR/SKS-RR/SAR II/02.06.2016/3P/6C