



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.146 of 2016

Sundar

.. Petitioner

Vs.

The State rep by

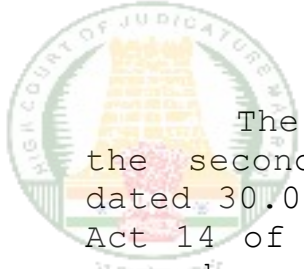
- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate
Sivagangai District,
Sivagangai.
- 3.The Superintendent of Prison,
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 respondent No.2 in Cr.M.P.No.1/Goonda/2016 dated 30.01.2016 and quash the same and direct the respondents to produce the body or person of the detenu by name Sundar, S/o.Hariraman, aged about 32 years, now detained at Central Prison, Madurai before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.C.Ramesh
Additional Public Prosecutor

O R D E R



The petitioner is the detenu. The detenu was detained by the second respondent by his order in Cr.M.P.No.1/Goonda/2016 dated 30.01.2016 as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, holding him to be a "Goonda", taking note of the ground case in Crime No.206 of 2015 on the file of Sipcot Police Station, registered for offences punishable under Sections 392 I.P.C r/w 397 and 506(ii) I.P.C and the following two adverse cases:-

(i) Crime No.172 of 2014 registered on the file of Sipcot Police Station for an offence punishable under Section 294(b), 307 and 506(ii) I.P.C;

(ii) Crime No.185 of 2015 registered on the file of Sipcot Police Station for an offence punishable under Section 392 I.P.C r/w 397 and 506 (ii) I.P.C.

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 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 assailed on several grounds, the learned counsel for the petitioner primarily relies on the following contention:-

"The petitioner respectfully submit that the G.O.(D).No.31, Home, Prohibition and Excise (XVI) Department, dated 18.01.2016 are relied document and vital document relating to the Detention order.

It is submitted that the detenu preferred representation before the respondent No.2 and seek for the copy of the G.O.(D).No.31, Home Prohibition & Excise (xvi) Department dated 18.01.2016 forthwith for preferring effective representation and for filing a writ of certiorari for quash the above mentioned Government Order. But the same was not considered, and the respondent No.2 failed to supply the above-mentioned relied document to the petitioner. The failure on the party of the respondent No.2 is a clear case of violation of Article 22(5) of the Constitution of India."



learned Additional Public Prosecutor on behalf of the said submission made by the learned counsel for the petitioner. The submissions, thus, made by the learned Additional Public Prosecutor are also taken into consideration.

5. The learned counsel for the petitioner after taking us through the entire booklet points out the fact that the copy of G.O.(D).No.31, Home Prohibition & Excise (xvi) Department dated 18.01.2016 was not included in the booklet supplied to the detenu.

6. So far as the contention of the learned counsel for the petitioner regarding 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 referred to in the detention order, has not been furnished to the detenu. Non-furnishing of the same amounts to denial of a 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.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention, made in Cr.M.P.No.1/Goonda/2016 dated 30.01.2016, by the second respondent, the District Collector and District Magistrate, Office of the District Collector and District Magistrate, Sivagangai District, Sivagangai and directs the release of the detenu by name Sundar, S/o. Hariraman aged about 32 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

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



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.

WEB COPY

+1cc to M/s.R.Alagumani, Advocate in SR.No.26287

SDR/SKS-RR/SAR II/02.06.2016/4P/7C

Order made in
H.C.P(MD)No.146 of 2016
Dated:- **17.05.2016**