



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.05.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P. (MD) No.197 OF 2016

Esakkipandi @ Super

... 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,
Tirunelveli District, Tirunelveli.

3.The Superintendent of Central Prison,
Palayamkottai Central Prison,
Tirunelveli District.

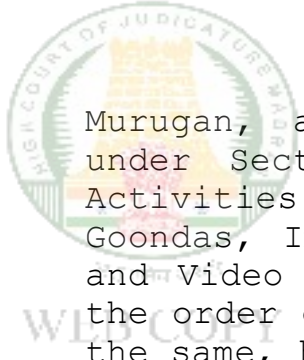
...Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus to call for the entire records, connected with the detention order of the respondent No.2 in M.H.S.Confdl No.10/2016 dated 08.02.2016 and quash the same and direct the respondents to produce the body or person of the detenu by name Esakkipandi @ Super, Son of Murugan @ Super Murugan, aged about 25 years, now detained in Palayamkottai Central Prison, 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

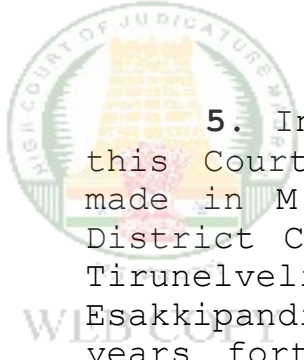


Murugan, aged about 25 years, has been detained as "Goonda", under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982), as per the order of the second respondent, dated 08.02.2016. Challenging the same, he has come up with this Habeas Corpus Petition.

2. Though the order of detention is assailed on several grounds, the learned counsel for the petitioner relies on the contention that the subjective satisfaction expressed by the detaining authority regarding the imminent possibility of the detenu coming out on bail in the ground case can be even termed *ipse dixit*, not based by cogent materials. In elaboration of the said contention, the learned counsel for the petitioner submits that when no bail application is pending in respect of the ground case, the detaining authority referred to another case as similar case particulars. The case of a co-accused in the same case alone can be cited as a bail order in a similar case. Since the detaining authority has chosen to refer to some other order passed in some other case, when no bail application was moved on behalf of the detenu, the comparison was improper and the same will make the subjective satisfaction of the detaining authority regarding the real possibility of the detenu coming out on bail *ipse dixit* not supported by cogent materials.

3. 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.

4. In paragraph No.6 of the grounds of detention, the detaining authority stated that there is a real possibility of his coming out on bail by filing bail application, since bail has been granted in similar cases. As rightly pointed out by the learned counsel for the petitioner, when no bail application is pending in the case in which the subjective satisfaction of the real possibility of the detenu coming out on bail is to be expressed, then the comparable order shall be an order passed in respect of a co-accused and not an order passed in any other case. The said dictum has been laid down by the Hon'ble Supreme Court in **Huidrom Konungjao Singh vs. State of Manipur and others**, reported in (2012) 3 MLJ (Cr1) 794 (SC). The said citation is squarely applicable to the present case. Hence, we do have no hesitation in coming to the conclusion that the comparison made for expression of subjective satisfaction is not proper and the expression of subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case is only *ipse dixit* not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.



5. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 08.02.2016, made in M.H.S.Confdl.No.10/2016, by the second respondent / the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu by name Esakkipandi @ Super, Son of Murugan @ Super Murugan, aged about 25 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/
Assistant Registrar(W)

/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,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Central Prison,
Palayamkottai Central Prison, Tirunelveli 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.

+1cc to M/s.R.Alagumanai, Advocate in SR.No.26298/16

SDR/SKS-RR/SAR II/02.06.2016/3P/7C

Order made in
H.C.P. (MD) No.197 of 2016
18.05.2016