



WEB COPY

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.198 of 2016

Palanimurugan

.. Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
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,
Palayamkottai Central Prison,
Tirunelveli District.

.. 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 of the Respondent No.2 in No.06/BCDFGISSSV/2016 dated 04.02.2016 and quash the same and direct the respondents to produce the body or person of the detenu by name Palanimurugan, son of Ramasamy, aged about 24 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For RR 1 to 3 : Mr.C.Ramesh

Additional Public Prosecutor

ORDER

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

The petitioner is the detenu. The detenu has been detained by the second respondent by his order in Detention Order No.06/BCDFGISSSV/2016, dated 04.02.2016, 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.443 of 2015 registered on the file of B4, Keeraithurai Police Station for the offences punishable under Sections 147, 148 and 302 of IPC and the following adverse case:-

Crime No.359 of 2014 registered on the file of V2,

Avaniyapuram Police Station for the offences punishable under Sections 452, 294(b), 324 and 307 of IPC.



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 tranquillity 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 mainly relies on the following contention:

"The Detaining Authority, after noticing the fact that the bail application filed by the detenu in the above said ground case before the Principal District and Sessions Judge, Madurai in Crl.M.P.No.367 of 2016 is pending, proceeded further to state that he was satisfied that there was a real and imminent possibility of the detenu coming out on bail **"by filing a bail application for the above case before the Higher Court"**. The above said observation that there was real possibility of coming out on bail by filing a bail application in the Higher Court, while bail petition filed before the Sessions Judge was pending, shows total non-application of mind. On the ground of non-application, the Order of detention is liable to be set aside."

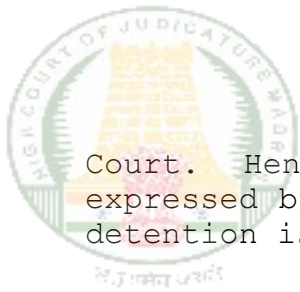
4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. Paragraph No.5 of the Grounds of Detention read as follows:

"5.I am aware that Thiru.Palanimurugan, S/o.Ramasamy is now in remand in the ground case in B4 Keeraithurai PS Cr.No.443/2015 u/s.147, 148, 302 IPC and he is lodged at the Central Prison, Palayamkottai. I am also aware that the bail application filed on his behalf in the above-said ground case before the Principal District and Sessions Judge, Madurai, vide Crl.M.P.No.367 of 2016 is pending. I am also aware that he was granted conditional bail in the said adverse case by the court concerned.

I am also aware that Thiru.Bose S/o.Muthuramalingam, co-accused in the above ground case has been granted bail by the Principal Sessions Judge, Madurai vide Crl.M.P.No.5418/2015, dated 03.08.2015. Therefore, on consideration of the said bail order and his (Thiru.Palanimurugan S/o.Ramasamy) bail application pending before the court concerned, I infer that there is a 'real possibility' of his (Thiru.Palanimurugan S/o.Ramasamy) coming out on bail through the pending bail application in the said ground case in which he is in remand. "

6. A consideration of the highlighted portion will make it clear that the Detaining Authority, as rightly contended by the learned counsel for the petitioner, exhibited pre-determination of mind on the part of the detaining authority regarding the pendency of the bail application by making an observation that there was real possibility of the detenu coming out on bail through bail application before the Higher



Court. Hence, on that ground alone, the subjective satisfaction expressed by the Detaining Authority is vitiated and hence, 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 04.02.2016, made in No.06/BCDFGISSSV/2016, passed by the second respondent, the Commissioner of Police, Madurai City, Madurai, and directs the release of the detenu, by name Palanimurugan, aged about 24 years, S/o.Ramasamy forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District. (in duplicate communicate to the detenu)
- 4.The Joint Secretary to Government,
Public (Law & Order),
Fort.Saint George,Chennai - 9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The District Collector,Madurai.

+1cc to M/S.R.Alagumani, Advocate in SR.No.26280

H.C.P (MD) No.198 of 2016
17.05.2016

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