



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.208 of 2016

Kulanthai Therasa .. Petitioner

Vs.

1.The Commissioner, Trichy City,
Trichy.

2.The Secretary, The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009. .. Respondents

Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records pertaining to the detention order in C.No.05/ Detention/C.P.O/T.C/2016 dated 08.02.2016 passed by the first respondent and set aside the same by setting the detenu by name Christopher, aged about 23 years, S/o.Devasagayam at liberty, now detain at Central Prison, Trichy..

For Petitioner : Mr.K.Sivabalan
For Respondents : Mr.C.Ramesh,
Addl.Public Prosecutor.

ORDER

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

The petitioner is the mother of the detenu. The detenu was detained by the first respondent by his order in C.No.05/ Detention/C.P.O/T.C/2016 dated 08.02.2016, 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.923 of 2015 on the file of Cantonment Police Station, Trichy City, registered for the offences punishable under Sections 392 read with 397 of IPC and the following adverse cases:

“(i)Crime No.245 of 2015 registered on the file
of K.R.Nagar Police Station, Trichy City for offences
punishable under Sections 457 and 511 of IPC.
(ii)Crime No.722 of 2015 registered on the file



of Woraiyur Crime Police Station, Trichy City for an offence punishable under Section 379 of IPC.

(iii) Crime No.741 of 2015 registered on the file of Woraiyur Crime Police Station, Trichy City for an offence punishable under Section 379 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 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.

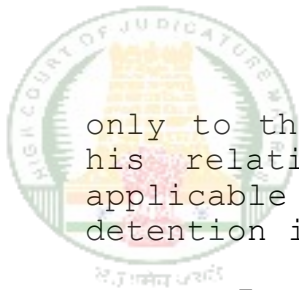
3.The learned counsel for the petitioner would contend that as per Article 22(1) of the Constitution of India, as soon as the arrest is made, it must be communicated to the relatives of the person arrested and if such constitutional requirement is not satisfied, then the detention order clamped on the detenu is liable to be vitiated on the ground of violation of Article 22(1). Relying on page Nos.49 and 75 of the booklet, the learned counsel would vehemently contend that the communication in respect of the arrest of the detenu in second and third adverse cases was given only to the Jailor, Central Prison, Trichy and therefore it will not serve the purpose for which the arrest communication is to be made. In support of his contention, the learned counsel relied on the decision of this Court in **Devi and others v. The Government of Tamil Nadu rep. by its Secretary and others** reported in 2014(2) MWN (Cr.) 566 (DB).

4.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.

5.In **Devi and others v. The Government of Tamil Nadu rep. by its Secretary and others** reported in 2014(2) MWN (Cr.) 566 (DB), this Court has held as follows:

"On verification of the Booklets in all these cases, particularly, the Arrest Memos would reveal that the communications have been sent either to the Superintendents or Jailors of the Prisons. The Sponsoring Authorities have failed to comply with the Constitutional requirements. Therefore, we are of the considered opinion that there is a violation of Constitutional requirement. If such orders are passed by the Detaining Authorities, based on such an information, which is not supplied and communicated either to the detenu or the relatives or the parties, the purpose of Constitutional requirement will be defeated and the provisions of the Act contemplating the manner and the procedure under which it should be done, has also to be followed by them. Such a failure would vitiate the entire process and therefore, the impugned Orders of Detention are unsustainable in law. Accordingly, the impugned Orders of Detention are set aside".

6.In the case on hand also, the communication in respect of the arrest of the detenu in second and third adverse cases was given



only to the Jailor, Central Prison, Trichy and not to the detenu or his relatives. Therefore, the above said decision is squarely applicable to the case on hand. 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 the impugned order of detention in C.No.05/Detention/ C.P.O/T.C/2016 dated 08.02.2016 passed by the first respondent is set aside. The Detenu, by name, Christopher, S/o.Devasagayam, is directed to be set at liberty, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

smn/sj

To

1. The Commissioner, Trichy City, Trichy.

2. The Secretary, The Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

3 The Superintendent, Central Prison,
Trichy. (Induplicate for communication to detenue)

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 Mr.K.Sivabalan Advocate Sr.No.26279

GJM/NGM/SS/SAR-III-2.6.16-3p-8C

ORDER MADE IN
H.C.P (MD) No.208 of 2016
18.05.2016