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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2016

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Habeas Corpus Petition (MD) No.238 of 2016

Muthuselvam

... Petitioner

Vs.

1.State of Tamil Nadu,
rep by The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St., George,
Chennai 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S.Confdl No. 13/2016 dated 09.02.2016 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Marimuthu S/o. Pandi Thevar aged about 27 years now detained at Central Prison Palayamkottai before this Honourable Court and set him at liberty forthwith.

For Petitioner : Mr.K.Sudalaiyandi

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor.

ORDER

(Order of the Court was made by **R.MAHADEVAN,J**)

The petitioner is the wife of the detenu, namely, Marimuthu, son of Pandi Thevar, who has been detained under the Tamil Nadu Act 14 of 1982 by the order of the second respondent, in his proceedings in M.H.S.Confdl.No.13/2016, dated



09.02.2016, branding him as a 'Goonda'. Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. We have heard the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds have been raised in this petition, the learned Counsel appearing for the petitioner would mainly focus his argument on the ground that despite several representations have been made by the detenu, the relevant copies of the materials have not been furnished to the detenu, which is fatal to the subjective satisfaction arrived at by the Detaining Authority that there was every real possibility for the detenu to come out on bail is not based on any material and thus, the detention order is liable to be set aside. This, according to the learned Counsel appearing for the petitioner is totally baseless and reflecting the total non-application of mind of the Detaining Authority. In support of his contentions, he relied on the judgment of this Court in **S.Sarsu v. The Government of Tamil Nadu and another** [H.C.P.No.3715 of 2014, decided on 25.03.2015].

4. Despite several opportunities given, no counter affidavit is forthcoming on the side of the respondents. Also, the learned Additional Public Prosecutor is not in a position to dispute the above fact.

5. We have considered the above said submissions and perused the materials available on record.

6. This Court, in **Jarinabegam v. State of Tamil Nadu by Secretary to Government, Prohibition and Excise Department, Chennai and another (2007-1-MLJ-Cr1.18)**, relying on the decision of the Honourable Supreme Court in **M.Ahamed Kutty v. Union of India and another** reported in **1990-2-SCC-1**, held that non-supply of a copy of the bail application to the detenu has the effect of vitiating the order of detention.

7. In the light of the above dictum laid down by the Honourable Supreme Court, we are of the considered view that non-supply of relevant documents sought by the detenu, vitiates the order of detention as the detenu has lost his valuable right to make an effective representation to the authorities concerned and therefore, the detention order is liable to be set aside.

8. In the result, the impugned detention order passed by the second respondent, detaining the detenu, namely, Marimuthu, son of Pandi Thevar, aged 27 years, made in M.H.S.No.13/2016, dated 09.02.2016, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is



ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St., George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Joint Secretary to Government,
Public (Law & Order), For, St., George, Chennai-9.

SDR/KMB/SAR I/02.06.2016/3P/6C

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