



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.274 of 2016**

Arunraj .. Petitioner

Vs.

- 1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai 600 009.
  - 2.The District Collector and District Magistrate,  
Office of the District Collector and District Magistrate,  
Virudhunagar District, Virudhunagar.
  - 3.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.
- .. Respondents

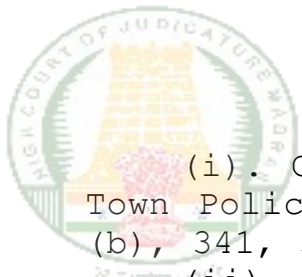
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records connected with the detention order of the Respondent No. 2 in C.M.P.No. 2/2016 dated 20.02.2016 and quash the same and direct the respondents to produce the detenu namely Arunraj, son of Subramaniyan, aged about 26 years, detained in Central Prison, Madurai before this Honourable Court and set him at liberty.

|                 |                              |
|-----------------|------------------------------|
| For petitioner  | : Mr.R.Alagumani             |
| For Respondents | : Mr.C.Ramesh                |
|                 | Additional Public Prosecutor |

### **O R D E R**

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

The petitioner is the detenu. He has been detained by the second respondent by his order in C.M.P.No.2/2016 dated 20.02.2016, 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.66 of 2016 registered on the file of Sivakasi Town Police Station for an offence punishable under Section 392 of the Indian Penal Code and the following two adverse cases:-



(i). Crime No.538 of 2015 registered on the file of Sivakasi Town Police Station for an offence punishable under Sections 294 (b), 341, 324 and 302 of the Indian Penal Code;

(ii). Crime No.544 of 2015 registered on the file of Sivakasi Town Police Station for an offence punishable under Section 392 of the Indian Penal Code.

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 peace 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 contention that there is total non-application of mind on the part of the Detaining Authority. Hence, on the ground of non-application of mind, 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. In Paragraph No.6 of the grounds of detention, the Detaining Authority has made the following observation:-

"I am aware that Thiru.Arunraj has been remanded to judicial custody upto 04.03.2016 and lodged in Central Jail, Madurai in connection with Sivakasi Town Police Station in Cr.No.66/16. The ground case in Cr.No.66/16 was registered against the accused u/s 392 I.P.C. In this case, the accused Thiru.Arunraj filed bail petition before the Judicial Magistrate Court, Sivakasi in CrMP.No.1577 of 2016 dated 16.02.2016 and it was pending. In a similar section of case in Cr.No.259/12 u/s 392 I.P.C registered against the accused Thiru.Prabhu at Sivakasi East Police Station, the Principal Sessions Court, Srivilliputhur granted bail to the accused vide Cr.M.P.No.4110/2013 dated 05.08.2013. Hence, I infer that there is a **real possibility** of his coming out on bail by filing bail petition by the accused in the ground case before the concerned court or in the higher court, in future, **more** bails are granted by the court in such cases. Even though Thiru.Arunraj has been arrested for



committing offence and released on bail in the two adverse cases, he continuously committing offences without mending his ways. Hence, I further infer that **if he comes out on bail**, he will, further, indulge in such activities in future, which will be prejudicial to the maintenance of public order and public peace and further that the recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order."

6. In this regard, the learned counsel for the petitioner relies on a decision of this court reported in **(2008) 3 MLJ (Cr1) 1533 (Irusammal Vs State of Tamil Nadu rep. By its Secretary, Prohibition and Excise Department, Chennai-600 009 and another)**, wherein, the Principal Bench of this Court has held as follows:

"As rightly pointed out by the learned counsel for the petitioner, when the bail application of the detenu was very well pending before the Principal District and Sessions Court, Chengalpattu and the said fact was very well noted by the detaining authority, it is not clear how he arrived at a conclusion that the detenu will come out on bail by filing a bail application before the same court or higher court which amply shows his non-application of mind in considering the case of the detenu and detaining him as a Bootlegger under the Tamil Nadu Act 14 of 1982." There are numerous cases where we have quashed the detention orders solely on this ground. The above case is only a sample. The decisions of this court must have been brought to the knowledge of the State. We presume so. But till today, the same mistake occurs and the orders of detention are regularly quashed."

7. Following the above stated decision of this court, we are of the considered view that there is total non-application of mind on the part of the Detaining Authority. When already a bail application of the detenu was very well pending before the Judicial Magistrate Court, Sivakasi in CrMP.No.1577 of 2016, dated 16.02.2016 and even the said fact was very well noted by the detaining authority in the detention order, this court wonders how he arrived at a conclusion that the detenu will come out on bail by filing a bail application before the same court or higher court. Hence, on the ground of non-application of mind alone, the order of detention is liable to be set aside.



8. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention made in C.M.P.No. 2/2016 dated 20.02.2016, passed by the second respondent, the District Collector and District Magistrate, Virudhunagar District, Virudhunagar and directs the release of the detenu, by name Arunraj, son of Subramaniyan, aged about 26 years, detained in Central Prison, Madurai, forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-  
Vacation Officer

/True Copy/

Sub Assistant Registrar

To:

- 1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat, Chennai 600 009.
- 2.The District Collector and District Magistrate,  
Office of the District Collector and District Magistrate,  
Virudhunagar District, Virudhunagar.
- 3.The Superintendent of Prison,  
Madurai Central Prison,  
Madurai District.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Alagumani, Advocate Sr.No.26282/2016

vs

AA/SKS-RR/SAR-II/03.06.2016/4P-6C/

**ORDER MADE IN  
H.C.P(MD)No.274 of 2016  
17.05.2016**