



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.05.2016

CORAM:

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**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**  
**and**  
**THE HONOURABLE MR.JUSTICE B.GOKULDAS**

H.C.P(MD)No.276 of 2016

Muthu @ Marimuthu

... Petitioner

Vs.

1. The Secretary to Government,  
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.
3. The Superintendent of Prison,  
Palayamkottai Central Prison,  
Palayamkottai,  
Tirunelveli District.

... Respondents

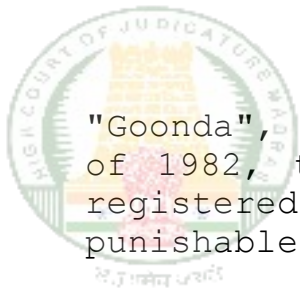
**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records in detention order passed in Detention Order M.H.S.Confdl.No.17 of 2016, dated 18.02.2016 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu by name Muthu @ Marimuthu, s/o.Mari Nadar, aged about 40 years, 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

**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 M.H.S.Confdl.No.17 of 2016, dated 18.02.2016, 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.49 of 2016 registered on the file of Alangulam Police Station for offences punishable under Sections 341, 294(b), 387 and 506(ii) I.P.C.

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 submits that the non-application of mind on the part of the Detaining Authority is apparent from Paragraph No.6 of the grounds of detention, wherein the subjective satisfaction of the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case came to be expressed.

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. The relevant part of the Paragraph No.6 in the grounds of detention is re-produced hereunder:-

"6. I am aware that bail was granted to Thiru.Muthu alias Marimuthu before the Principal Sessions Court, Tirunelveli in Cr.M.P.No.1240 of 2013 dated 07.03.2013 in Alangulam Police Station Cr.No.623 of 2012. I am aware that the bail was granted to him before the Principal Sessions Court, Tirunelveli in CRMP No.2532/2013 dated 13.06.2013 in Pavoorchatram Police Station Cr.No.154 of 2013. I am aware that the bail was granted to him before the Judicial Magistrate, Tenkasi in CRMP.No.170311/2014 dated 29.10.2014 in Alangulam Police Station Cr.No.515 of 2014. I am aware that Thiru.Muthu alias Marimuthu is in remand in Alangulam Police Station Cr.No.49/2016 and in this case, he filed a bail petition before the Judicial Magistrate, Tenkasi in CRMP.No.1100 of 2016 dated 04.02.2016 and the bail petition was dismissed on 12.02.2016 as the bail petition was not pressed and further in this case, he filed a bail petition before the Judicial Magistrate, Tenkasi in CRMP No.1492/2016 dated 16.02.2016 and the bail petition is yet to be disposed. I am also aware that there is **real possibility** of his



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coming out on bail in future by filing bail application for the above case since in similar case bails are granted by the appropriate courts. I am also aware that in this case, bail has been granted to Thiru.Muthu alias Marimuthu's associate Masanamoorthy in CRMP No.1100/2016 dated 12.02.2016 by the Judicial Magistrate, Tenkasi. I therefore infer that there is **real possibility** of his (Thiru.Muthu alias Marimuthu) coming out on bail in Alangulam Police Station Cr.No.49/2016; since bails are granted by the appropriate courts in this case. If he comes out on bail, he will indulge in further activities in future, which will be pre-judicial to the maintenance of the public order. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am satisfied that Thiru.Muthu alias Marimuthu is a "Goonda" and there is a compelling necessity to detain him in order to prevent him from indulging in acts which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982."

6. The highlighted portion will show that the Detaining Authority did not apply his mind and he has made an observation which is meaningless. It is so nebulous, as it cannot be ascertained from the said part of the grounds of detention as to whether any bail application was pending or a bail application was going to be filed. The very absurd language used therein will show total non-application of mind on the part of the Detaining Authority. Apart from the above, the learned counsel for the petitioner also submits that no bail application was filed in the ground case, but still the Detaining Authority proceeded with an observation that there was real possibility of the detenu coming out on bail in the ground case on the basis of the order of bail granted in respect of another case. Hence, on the ground of non-application of mind as seen from the observation of nebulous statement in the grounds of detention regarding the pendency or otherwise of the bail application in the ground case, the expression of subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case stands vitiated and the same can be termed as *ipse dixit*, not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.

<https://hcservices.ecourts.gov.in/hcservices/>

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 18.02.2016,



made in M.H.S.Confdl.No.17 of 2016, passed by the second respondent, the District Collector and District Magistrate, Tirunelveli, and directs the release of the detenu, by name Muthu alias Marimuthu, aged about 40 years, S/o.Mari Nadar forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary to Government,  
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.
3. The Superintendent of Prison,  
Palayamkottai Central Prison  
Palayamkottai  
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.

+ 1 CC TO MR.R.ALAGUMANI, ADVOCATE IN SR NO. 26283

VS/PMU

TE/PEK/SAR-I : 02/06/2016 : 4P/7C

ORDER MADE IN  
H.C.P (MD) No.276 of 2016  
17.05.2016