

**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.291 of 2016

Selvakumar

... Petitioner/ Detenu

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,
Office of the District Collector and District Magistrate,
Thanjavur District, Thanjavur.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.

... Respondents

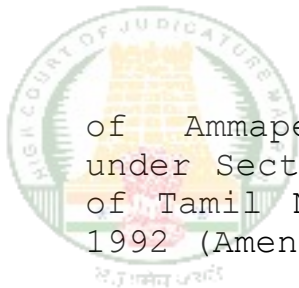
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records, in detention order passed in P.D.No.01 of 2016 dated 17.02.2016 on the file of the second respondent herein and to set aside the same as illegal and to direct the respondents to produce the petitioner, namely, Selvakumar, S/o.Murugaiyan, Male, aged 29 years, who is detained in Central Prison, Tiruchirappalli, before this Court and to set him at liberty.

For Petitioner : Mr.K.A.S. Prabhu
For Respondents : Mr.C.Ramesh
Additional Public Prosecutor

O R D E

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

The petitioner is the detenu, namely, Selvakumar. The detenu was detained by the second respondent by his order in P.D.No.01 of 2016 dated 17.02.2016, 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.26 of 2016 on the file



of Ammapettai Police Station registered for offences punishable under Sections 294(b), 341, 386, 387, 307 I.P.C., and Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act 1992 (Amended 1994).

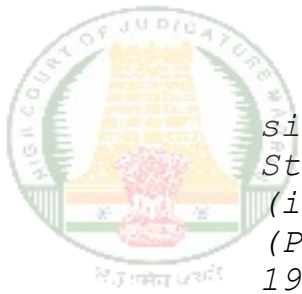
2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and tranquillity and also expressing subjective satisfaction that it was very likely that the detenu 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 seeks leave of the Court to raise an additional ground and we permit the same. The learned counsel for the petitioner submits that the non-application of mind on the part of the Detaining Authority is apparent from Paragraph Nos.4 and 5 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.4 in the grounds of detention is re-produced hereunder:-

"I am aware that Thiru.Selvakumar, aged 29/2016, Son of Murugaiyan was produced before the District Munsif-cum-Judicial Magistrate, Papanasam in Ammapettai Police Station Cr.No.26/2016, u/s.294(b), 341, 386, 387, 307 I.P.C., and 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act 1992 (Amended 1994), on 21.01.2016 and was remanded to Judicial Custody and was lodged at Sub-Jail, Papanasam as a remand prisoner till 04.02.2016 and further his remand period has been extended periodically upto 18.02.2016. I am aware that Thiru.Selvakumar, Male, aged 29/2016, Son of Murugaiyan has filed a bail application in Ammapettai Police Station Cr. No.26 of 2016 before the District Munsif-cum-Judicial Magistrate, Papanasam in Cr.M.P.No.329/2016 connection with the above case bail petition filed and the same was dismissed on 04.02.2016. Further bail application filed before the Principal Sessions Judge, Thanjavur was dismissed in Cr.M.P.No.370/2016, dated 09.02.2016. In a



similar case registered in Mannargudi Town Police Station Cr.No.491/2013, u/s.294(b), 324, 307, 506 (ii) I.P.C., r/w 3(1) of Tamil Nadu Property (Prevention of Damage & Loss) Act 1992 (Amended 1994) bail was granted to the accused Thiru.Babu@ Byepass Babu @ Shanmugam by the vacation Sessions Court, Tiruvarur in Cr.M.P.No.693/2013 on 15.05.2013. **Hence, I am satisfied that there is a real and imminent possibility of his (Thiru.Selvakumar, Aged 29/2016, Son of Murugaiyan) coming out on bail by filing a bail application for the above case before the Higher Court."**

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 even though, the bail petitions filed by the petitioner were already dismissed twice, 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, 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.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention, made in P.D.No.01 of 2016 dated 17.02.2016, by the second respondent, the learned District Collector and District Magistrate, Office of the District Collector and District Magistrate, Thanjavur District, Thanjavur and directs the release of the detenu by name Selvakumar, S/o.Murugaiyan, aged 29 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar/

Vacation Officer

/True copy/



To

- 1.State of Tamil Nadu, rep., by
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- 2.The District Collector and District Magistrate,
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Thanjavur District, Thanjavur.
3. The Superintendent of Prison,
Central Prison, Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Pmu/vs

CSL/KMB/SAR-I/02.06.2016 :4P/5C

Order made in
H.C.P(MD)No.291 of 2016
Dated:- 17.05.2016