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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.309 of 2016

Gopalakrishnan : Petitioner

Vs.

1.State of Tamil Nadu,
represented by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.

2.The District Collector and
District Magistrate,
O/o The District Collector and
District Magistrate,
Tiruvarur District,
Tiruvarur.

3.The Superintendent,
Central Prison,
Tiruchirappalli. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records in detention order passed in C.O.C.No.06/2016 dated 28.02.2016 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Gopalakrishnan, S/o Darkar, male, aged 31 years, who is detained in Central Prison, Tiruchirappalli before this Court.

For Petitioner : Mr.K.A.S.Prabhu
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 – Gopalakrishnan, S/o Darkar, aged about 31 years, has been detained, as per the order of the second respondent, dated 28.02.2016, under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act,1982, (Tamil Nadu

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Act 14 of 1982), read with the order issued by the Government in G.O.[D].No.36, Home Prohibition and Excise (XVI) Department, dated 18.01.2016, branding him as "Goonda", taking note of the ground case in Crime No.52 of 2016 on the file of Tiruvarur Town Police Station registered for offence punishable under Section 397 of the Indian Penal Code and the following five adverse cases:-

(i) Crime No.565 of 2014 registered on the file of Cantonment Crime Police Station, Trichy District for offence punishable under Section 379 IPC ;

(ii)Crime No.319 of 2015 registered on the file of Thanjavur West Police Station, Thanjavur District for offence punishable under Section 379 I.P.C.,

(iii) Crime No.610 of 2015 registered on the file of Tiruvarur Town Police Station, for offence punishable under Section 379 I.P.C.,

(iv) Crime No.51 of 2016 registered on the file of Tiruvarur Town Police Station, for offence punishable under Section 379 I.P.C., and

(v) Crime No.64 of 2016 registered on the file of Tiruvarur Taluk Police Station, for offence punishable under Section 379 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 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 various grounds, the learned counsel for the petitioner contends that though the representation was made on 07.03.2016 by the detenu for revocation of the order of detention, the rejection order was passed by the second respondent only on 05.04.2016 and hence, there is a delay in considering the representation and the same will amount to denial of reasonable opportunity to the detenu to make an effective representation to the Government or to challenge the order of detention in an effective manner.

4. We also heard the submissions made by the learned Additional Public Prosecutor on the above said contentions raised on behalf of the petitioner.

5. The learned counsel for the petitioner has produced a copy of the order of rejection dated 05.04.2016. From the same, it is obvious that the order of rejection came to be passed on 05.04.2016 by the Detaining Authority and the same was served on the detenu only on 08.04.2016. The same amounts to denial of reasonable opportunity to the detenu to make an effective

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representation to the Government or to challenge the order of detention in an effective manner. There is no explanation offered for the said delay and the same vitiates the order of detention. On that ground alone, the order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 28.02.2016, made in C.O.C.No.06/2016 by the second respondent, the District Collector and District Magistrate, Tiruvarur District, Tiruvarur and directs the release of the detenu, by name Gopalakrishnan, S/o Darkar, aged about 31 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
   Home, Prohibition and Excise Department,
   Fort St.George, Chennai-9.

2. The District Collector and District Magistrate,
   O/o The District Collector and District Magistrate,
   Tiruvarur District, Tiruvarur.

3. The Superintendent,
   Central Prison, Tiruchirappalli.

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.

Order Made in
H.C.P(MD)No.309 of 2016
Dated: 18.05.2016

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SH/SKS/SAR-III:01.06.2016:3P/6C

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