



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.73 of 2016

Krishnaveni

.. Petitioner/ Wife of 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 Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
 3. The Superintendent of Prison,
Central Prison, Madurai.
- ... Respondents

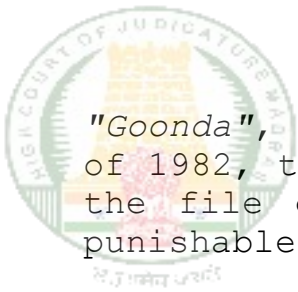
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records in detention order passed in Detention Order No.07 of 2016 dated 11.01.2016 on the file of the second respondent herein and to set aside the same as illegal and to direct the respondents to produce the petitioner's husband, namely, Senthilmurugan, S/o.Muthuraakan, Male, aged about 32 years, who is detained in Central Prison, Madurai before this Court and to set him at liberty.

For Petitioner : Mr.D.Balamurugapandi
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 wife of the detenu. The detenu, namely, Senthilmurugan was detained by the second respondent by his order in No.07 of 2016 dated 11.01.2016, 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.513 of 2015 on the file of Chinnalapatty Police Station registered for offence punishable under Section 392 r/w 397 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 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 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.5 in the grounds of detention is re-produced hereunder:-

"I am aware that Senthilmurugan is in remand in District Jail, Dindigul in connection with 1) Chinnalapatty Police Station Cr.No.386/2015 u/s.392 I.P.C., 2) Chinnalapatty Police Station Cr.No.439/2015 u/s.392 I.P.C., 3) Chinnalapatty Police Station Cr.No.466/2015 u/s.454, 380 I.P.C., 4) Chinnalapatty Police Station Cr.No.481/2015 u/s.379 I.P.C., 5) Chinnalapatty Police Station Cr.No.513/2015 u/s.392 r/w 397 I.P.C. In connection with 1) Chinnalapatty Police Station Cr.No.386/2015 u/s.392 I.P.C., the accused Senthilmurugan filed bail petition before the Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.5773/2015 and bail petition was dismissed on 26.11.2015. Again he filed a bail petition before the Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.6034/2015 and the same is pending. 2) Chinnalapatty Police Station Cr.No.439/2015 u/s.392 I.P.C., the accused Senthilmurugan filed bail petition before the



Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.5771/2015 and bail petition was dismissed on 26.11.2015. Again he filed a bail petition before the Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.6036/2015 and the same is pending. 3) Chinnalapatty Police Station Cr.No.466/2015 u/s.454, 380 I.P.C., the accused Senthilmurugan filed bail petition before the Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.5774/2015 and bail petition was dismissed on 26.11.2015. Again he filed a bail petition before the Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.6032/2015 and the same is pending. 4) Chinnalapatty Police Station Cr.No.481/2015 u/s.379 I.P.C., the accused Senthilmurugan filed bail petition before the Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.5772/2015 and bail petition was dismissed on 26.11.2015. Again he filed a bail petition before the Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.6035/2015 and the same is pending. 5) Chinnalapatty Police Station Cr.No.513/2015 u/s. 392 r/w 397 I.P.C., the accused Senthilmurugan filed a bail petition before the Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.5770/2015 and the same was dismissed on 24.11.2015. Again he filed a bail petition before the Court of Judicial Magistrate No.III, Dindigul vide Cr.M.P.No.6033/2015 and the same was also dismissed on 09.12.2015. Hence, I infer that it is very likely that he may come out on bail for the cases for which bail was not granted and there is a real possibility of his coming out on bail by filing bail petition before the higher Court for which the bail petition was dismissed by the lower 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 that even though the bail petitions filed by the petitioner were already dismissed and the petitioner filed second bail petitions and the same are pending, the Detaining Authority proceeded with an observation that there was real possibility of the detenu coming out on bail for the cases for which bail was not granted. 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.

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7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention, made in No.07 of 2016 dated 11.01.2016, by the second respondent, the learned District Magistrate and District Collector, Office of the District Magistrate and District Collector, Dindigul District, Dindigul and directs the release of the detenu by name Senthilmurugan, S/o.Muthuraakkan, aged about 32 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar

/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 Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
3. The Superintendent of Prison,
Central Prison, Madurai.
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.B.BALAMURUGA PANDI, ADVOCATE IN SR NO. 26273

PMU/VS

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

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

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