



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE NISHA BANU

H.C.P(MD)No.797 of 2016

Kala : Petitioner/Mother of Detenu
Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.

3.The Superintendent of Prison,
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, pertaining to the impugned detention order passed by the second respondent made in his proceedings in C.O.C.No.44/2016, dated 14.06.2016, in detaining the detenu under the Tamil Nadu Act 14 of 1982, as a Goonda and quash the same and direct the respondents to produce the detenu, namely, Sivakumar, S/o.Gajendran, Male, aged about 28 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

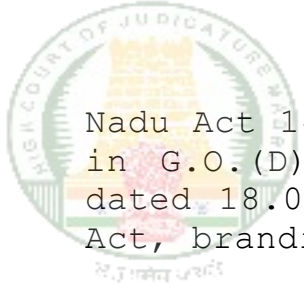
For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by R.SUBBIAH, J.]

This Habeas Corpus Petition is filed by the mother of the detenu - Sivakumar, S/o.Gajendran, Male, aged about 28 years, who is under detention, pursuant to the order passed by the second respondent in C.O.C.No.44/2016, dated 14.06.2016, under Section 2 (f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act, 1982, (Tamil



Nadu Act 14 of 1982), read with the order issued by the Government in G.O.(D).No.87, Home Prohibition and Excise (XVI) Department, dated 18.04.2016, under Sub-Section (2) of Section 3 of the said Act, branding him as "Goonda".

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.

3. 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.

4. The learned counseler for the petitioner submitted that the Detaining Authority, for the purpose of passing the detention order, has relied on two adverse cases and one ground case. The above said two adverse cases relate to offences alleged to have been committed under Sections 294(b), 324, 323 and 506(ii) of the Indian Penal Code, whereas the ground case relates to under Section 302 of the Indian Penal Code. Thus, according to the learned counsel, the comparison is not proper and it may even show non-application of mind on the part of the Detaining Authority.

5. We have considered the above submissions.

6. As rightly contended by the learned counsel for the petitioner, the Detaining Authority relied on the bail granted in the first adverse case to arrive at the subjective satisfaction. The detenu came to adverse notice in first adverse case in Crime No.539 of 2014, registered on the file of Anaikaranchathiram Police Station, for offences punishable under Sections 294, 324, 323 and 506(ii) of the Indian Penal Code, whereas, the ground case is for an offence under Section 302 of the Indian Penal Code. Thus, the comparison made by the Detaining Authority is not proper and it may even show non-application of mind on the part of the Detaining Authority. Hence, the plea of non-application of mind on the part of the Detaining Authority, as canvassed by the learned counsel for the petitioner, is liable to be sustained. On that score alone, the order of detention is liable to be set aside.

7. In the result, the Detention Order, passed by the second respondent, in his proceedings in No.C.O.C.No.44/2016, dated 14.06.2016, is quashed. The detenu, namely, Sivakumar, ~~Services Court, Erode, Tamil Nadu~~ Male, aged about 28 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.



8. In the upshot, we allow the Habeas Corpus Petition.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
3. The Superintendent of Prison,
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.

+1 cc to M/s.K.M.Karunakaran, Advocate in SR.No.82694

NB

TTN/SS2-KSM/11.01.2017 : 3P-7C

ORDER MADE IN
H.C.P(MD)No.797 of 2016
Dated: 22.12.2016