



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.800 of 2016

Alamelu Mangathai

: Petitioner

Vs.

1.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli-9.

2.The Secretary to Government,
Government of Tamil Nadu,
Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, calling for the records of the first respondent in detention order in Ret.No.M.H.S.Confdl.No.67/2016, setting aside the order of detention passed by the first respondent herein setting the detenu by name Alagarsamy alias Petharaj, S/o.Late.Alagarsamy, aged about 46 years, at liberty now detained in Central Prison, Palayamkottai.

For Petitioner

: Mr.P.Subbaraj

For Respondents

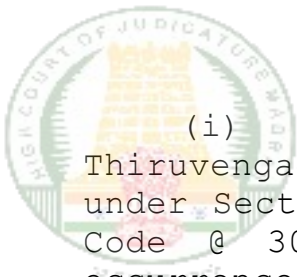
: Mr.C.Mayilvahan Rajendran,
Additional Public Prosecutor

ORDER

(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

The petitioner is the mother of the detenu and aggrieved by the impugned Order of Detention passed by the first respondent, branding him as "Goonda", vide impugned order dated 08.06.2016, in his proceedings in M.H.S.Confdl.No.67/2016, the petitioner has filed this Habeas Corpus Petition.

2. The grounds of detention read that the detenu came to adverse notice in the following cases:



(i) Crime No.66 of 2010 registered on the file of Thiruvengadam Police Station, for the commission of the offences under Sections 147, 148, 294(b), 109, 342, 302 of the Indian Penal Code @ 302, 114 and 212 of the Indian Penal Code, for the occurrence took place on 04.06.2010 at about 17.30 hours.

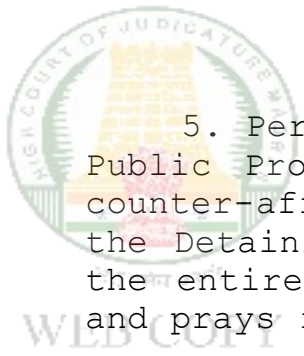
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(ii) Crime No.157 of 2015 registered on the file of Thiruvengadam Police Station, for the commission of the offences under Sections 147, 148, 323, 324 of the Indian Penal Code and 4 of Tamil Nadu Prohibition of Harassment of Women Act read with Section 3(1)(r)(s), 3(2)(va) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act Amendment Act, 2015, for the occurrence took place on 17.10.2015 at about 23.00 hours.

(iii) Crime No.30 of 2016 registered on the file of Thiruvengadam Police Station, for the commission of the offences under Sections 294(b), 387 and 506(ii) of the Indian Penal Code, for the occurrence took place on 26.02.2016 at about 19.00 hours.

3. The grounds of detention further read that on 25.05.2016 at 17.30 hours at Maipparai, while the complainant was standing in front of a Grocery shop, the detenu had abused him with filthy language and also brandished aruval and tried to attack him and the complainant moved away and the detenu had attacked him with the backside of the Aruval and caused bleeding injury to him. The detenu also threatened the complainant with dire consequences and as a result of which, the people nearby ran helter - skelter and in this regard, Thiruvengadam Police Station has also registered a case in Crime No.65 of 2016 for the commission of the offences under Sections 341, 294(b), 307 and 506(ii) of the Indian Penal Code (ground case). The detenu was arrested on 26.05.2016 and was produced before the Court of Judicial Magistrate, Sankarankovil and was remanded to judicial custody till 09.06.2016. The Detaining Authority, on being satisfied that the activities of the detenu are prejudicial to the maintenance of public order and also satisfied with the materials placed before it, has clamped the order of detention.

4. The learned counsel for the petitioner has drawn the attention of this Court to the typed-set of documents and would submit that the mother of the detenu has submitted a pre-detention representation dated 15.04.2016 to the Hon'ble Chief Minister's Special Cell with a copy marked to the Deputy Inspector General of Police, Tirunelveli Region, the District Superintendent of Police, Tirunelveli as well as the District Collector, Tirunelveli and those representations were sent by registered posts and despite receipts and acknowledgements, she has not been served with any response and the impugned order of detention also does not mention anything about the disposal of the said representation and prays for interference.



5. Per contra, Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor has drawn the attention of this Court to the counter-affidavit of the first respondent and would submit that the Detaining Authority, on due and proper application of mind to the entire materials, has rightly clamped the order of detention and prays for dismissal of the Habeas Corpus Petition.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. In the typed-set of documents, the pre-detention representation dated 15.04.2016 submitted by the mother of the detenu is enclosed and it was addressed to the Hon'ble Chief Minister's Special Cell with a copy marked to other officials and postal receipts are also available. In paragraph No.10 of the affidavit filed in support of the petition, a specific ground has been raised as to the non-disposal of the pre-detention representation. In the counter, it is stated that the representations received from the detenu and his relatives have been duly considered without any delay. However, a perusal of the grounds of detention would disclose that there is no reference about the disposal of the pre-detention representation.

8. In the considered opinion of the Court, the consideration and disposal of the representation is a constitutional right guaranteed to the detenu and in the absence of any averment to that effect in the grounds of detention, the impugned order of detention is vitiated.

9. In the result, the Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the first respondent, in his proceedings in M.H.S.Confdl.No.67/2016, dated 08.06.2016, is quashed. The detenu, namely, Alagarsamy alias Petharaj, S/o.Alagarsamy, aged about 46 years, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

sd/-

Assistant Registrar(Crl.side)

/True copy/

Sub Assistant Registrar

To

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



2.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli-9.

3.The Joint Secretary to Government,
Public (Law & Order),
Fort St., George, Chennai-9.

4.The Superintendent, Central Prison,
Palayamkottai.
(in duplicate for communication to detenu)

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SML

CSL/SS-2/21.12.2016: 4P/7C

Order made in
H.C.P. (MD) No.800 of 2016
Dated: 02.12.2016