



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.12.2017

PRONOUNCED ON : 21.12.2017

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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.[MD].No.1036 of 2017

Sudalaikanu

.. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by the Principal Secretary to Government,
Home (Prison) Department,
State of Tamil Nadu,
Secretariat,
St. George Fort,
Chennai - 600 009.

2.The Additional Director General of Police/
Inspector General of Prisons,
C.M.D.A. Towers II,
No.1, Gandhi Irvin Road,
Egmore,
Chennai -8.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

4.The Inspector of Police,
Radhapuram Police Station,
Tirunelveli District.

.. Respondents

PRAYER: Habeas Corpus Petition has been filed under Article 226 of the Constitution of India, praying to direct the respondents to produce the detenu by name Mani, S/o.Muthupandi, aged about 33 years, now lodged and confining at Palayamkottai Central Prison before this Court and set him at liberty by extending the benefits under Juvenile Justice (Care and Protection of Children) Act, 2015 and set aside the conviction and sentence against the detenu by the learned Additional Sessions (Fast Track Court No.II), Tirunelveli in Special Sessions Case No.782/2000 dated 31.05.2005.



For Petitioner

: Mr.R.Alagumani

For respondents

: Mr.C.Ramesh,

Addl. Public Prosecutor

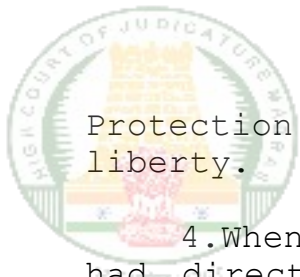
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ORDERR.SUBBIAH, J.

This Habeas Corpus Petition has been filed by the elder brother of the convict prisoner / detenu viz., Mani S/o.Muthupandi, aged about 33 years, now confined at Palayamkottai Central Prison, praying to set aside the conviction and sentence passed against the detenu by the learned Additional Sessions Judge (Fast Track Court No.II), Tirunelveli in Special Sessions Case No.782/2000, dated 31.05.2005 and set him at liberty by extending the benefits under Juvenile Justice (Care and Protection of Children) Act, 2015.

2. It is stated in the petition that the detenu was implicated as accused in a case registered in Crime No.374 of 1999 under Sections 147, 148, 324, 326 and 307 IPC and after trial along with the other accused, the trial Court, by its judgment dated 31.05.2005, has convicted the detenu under Sections 148 and 307 r/w 149 IPC and sentenced him to undergo one year rigorous imprisonment for the offence under Section 148 IPC and to undergo seven years rigorous imprisonment for the offence under section 307 r/w 149 IPC and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one year. Aggrieved by the same, the detenu along with the other accused filed CrI.A.(MD).No.268 of 2005. A learned Single Judge of this Court, by order dated 25.02.2010, set aside the conviction and sentence passed by the trial Court and acquitted all the accused, including the detenu. As against the said judgment, the defacto complainant has filed an appeal before the Hon'ble Supreme Court in CrI.A.No.268 of 2005. On 28.02.2017, the Hon'ble Supreme Court has allowed the appeal filed by the defacto complainant and directed the detenu and other accused persons to surrender before the Court for serving out the remaining period of sentence. As such, the detenu surrendered before the Court and now, the detenu is confined at Central Prison, Palayamkottai.

3.It is also stated in the petition that as per the Transfer Certificates issued by the T.D.T.A. Primary School, Kumilampadu, Vallioor Range, Tirunelveli District and by the T.D.T.A. Middle School Peripilankulam, Vallioor Range, Tirunelveli District and the Driving Licence, Election Commission Identity Card, Aadhar Card and other documents, the date of birth of the detenu is 14.11.1984. The date of the alleged occurrence is 06.11.1999. Therefore, the detenu was aged about 14 years, 11 months and 22 days at the time of alleged occurrence. But, the Police has wrongly stated in the charge sheet as if the detenu was a major. Due to ignorance of law, the detenu had failed to mention about his age at the time of trial and in the appeal. Hence, the petitioner has come up with this petition seeking to extend the benefit of Juvenile Justice (Care and



Protection of Children) Act, 2015 to the detenu and set him at liberty.

4. When the matter came up for hearing on 14.09.2017, this Court had directed the learned Additional District and Sessions Judge (Fast Track Court No.II), Tirunelveli to conduct an enquiry and to take such an evidence as necessary on consideration of all the documents to be filed by the petitioner. The learned IV Additional Sessions Judge, Tirunelveli has submitted a report on 13.10.2017. A perusal of the report would go to show that the learned Sessions Judge, after examining the petitioner, mother of the detenu, defacto complainant, In-charge Headmistress of Primary School and Middle School and the Village Administrative Officer and also after analysing various documents, has come to the conclusion that on the date of occurrence ie. on 06.11.1999, the age of the detenu was only 14 years 11 months and 22 days. Considering the age of the detenu at the time of occurrence, this Court is of the view that the detenu is eligible for the benefit of Juvenile Justice (Care and Protection of Children) Act.

5. As per Section 15 (f) of the Juvenile Justice (Care and Protection of Children) Act, at the most, the detenu can be detained in Observation Home upto three years. As per the certificate issued by the Superintendent of Prisons, Central Prison, Palayamcottai, the detenu has undergone the imprisonment of 2 years, 9 months and 16 days. In view of the above, this Court is of the view that the detenu can be set at liberty

6. In the result, this Habeas Corpus Petition is allowed; the conviction and sentence imposed on the detenu by name Mani S/o.Muthupandi in S.S.C.No.782 of 2000 are set aside and the detenu is directed to be set at liberty, if his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Secretary to Government,
Home (Prison) Department,
State of Tamil Nadu, Secretariat,
St. George Fort, Chennai - 600 009.

2. The Additional Director General of Police/
Inspector General of Prisons,
C.M.D.A. Towers II,
No.17, Gandhi Irwin Road,
Egmore, Chennai -8.



3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

4.The Inspector of Police,
Radhapuram Police Station,
Tirunelveli District.

5.The Joint Secretary to Government,
Public (Law and Order), Fort Saint George, Chennai-9

6.The Additional District and Sessions Court cum
Fast Track Court No.II, Tirunelveli

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

+One cc to Mr.R.Alagumani, Advocate, SR.No.94684

gcg

RL/9C/4P/SV/MMS/SAR1/17/1/2018

Order made in
H.C.P.[MD].No.1036 of 2017

Dated : 21.12.2017