



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.05.2017

CORAM:

WEB COPY

**THE HONOURABLE Mr.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE Mr.JUSTICE C.V.KARTHIKEYAN**

H.C.P.(MD)No.12 of 2017

Raja alias Rasappa

... Petitioner

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 Commissioner of Police,
Tirunelveli City, Tirunelveli.

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

... 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, connected with the detention order of the second respondent in No.40/BCDFGISSSV/2016, dated 21.12.2016 and quash the same and direct the respondents to produce the detenu, by name, Raja @ Rasappa, son of Krishnan, aged about 27 years detained in Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr. N.Pragalathan

For Respondents : Mr.C.Ramesh, APP

O R D E R

[Order of the Court was made by M.V.MURALIDARAN, J.]

The petitioner is the detenu. The detenu has been detained by the 2nd respondent by order in No.40/BCDFGISSSV/2016, dated 21.12.2016, holding the detenu to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.In the affidavit filed in support of this petition, it is stated that the detaining authority came to the subjective satisfaction by relying a bail order granted in Cr.M.P.No.4908 of 2015 passed by the Judicial Magistrate No.V, Tirunelveli. The said

subjective satisfaction arrived by the detaining authority amounts to non application of mind since the said bail order was granted under Section 167 Cr.P.C. and the detenu's bail application is pending before the District and Sessions Court filed under Section 439 Cr.P.C. Further, the translated copy of the document was not furnished. The detenu does not know English. Hence, the detenu is not in a position to understand the same and the right of giving effective representation was affected.

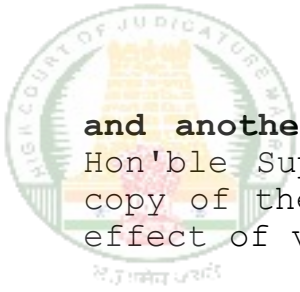
3. The learned counsel for the petitioner also submitted that non consideration of the above said fact is a non application of mind on the part of the Detaining Authority, who failed to consider the relevant facts while passing the detention order, which is violation of Article 22(5) of the Constitution of India.

4. The learned Additional Public Prosecutor appearing on behalf of the respondents would submit that the order of detention has been passed in due consideration of fact and law with a view to curtail his prejudicial activities and to maintain public order, and therefore, it does not warrant interference by this Court.

5. It is seen from the grounds of detention that admittedly, relevant documents have not been supplied to the detenu, as it did not form part of the paper book furnished by the prosecution. Therefore, non supply of the copy of the relevant documents to the detenu would vitiate the impugned detention order. This order is made only towards setting aside the order of detention passed against the detenu herein.

6. The Hon'ble Supreme Court in ***M. Ahamed Kutty Vs. Union of India and another (1990-2-SCC-1)*** has observed thus:

"7. Considering the facts in the instant case, the bail applications and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India, rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case."



and another (2007-1-MLJ-Cr1.-18) relying upon the decision of the Hon'ble Supreme Court cited supra has held that non supply of the copy of the bail application in similar cases to the detenu has the effect of vitiating the order of detention.

8.As already analysed, in the facts and circumstances of the present case, non supply of the documents to the detenu has the effect of vitiating the impugned detention order and that the detenu has lost valuable right to make an effective representation to the authorities concerned.

9.In the light of the above said principles laid down by the Hon'ble Supreme Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

10.In the result, the Detention Order, passed by the second respondent, in his proceedings in Detention Order in No.40/BCDFGISSSV/2016, dated 21.12.2016, is quashed. The detenu, namely, Raja @ Rasappa, son of Krishnan, aged about 27 years is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
- 2.The Commissioner of Police,
Tirunelveli City, Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
- 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.