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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.12.2017**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.(MD)No.1344 of 2017

Thanush @ Dineshkumar : Petitioner

Vs.

1. State of Tamil Nadu,
   rep. by the Principal Secretary to Government,
   Home, Prohibition & Excise Department,
   Fort St. George,
   Chennai - 600 009.

2. The Deputy Inspector General of Police,
   Madurai Range and the Commissioner of Police,
   Tirunelveli City (Full Additional Charge)
   Tirunelveli

3. The Superintendent of Police,
   Central Prison,
   Palayamkottai
   Tirunelveli . : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the records connected with the detention order passed in No.53/BCDFGISSSV/2017 dated 29.08.2017 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Thanush @ Dineshkumar, aged about 25 years, S/o.Pakthaseelan, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.C.Ramesh
Additional Public Prosecutor

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ORDER

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

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The petitioner is the detenu viz.Thanush @ Dineshkumar, son of Pakthaseelan, aged 25 years. The detenu has been detained, as per

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the order of the second respondent, dated 29.08.2017, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records carefully.

3.The main submission of the learned counsel for the petitioner is that the affidavit filed by the sponsoring authority was attested by the detaining authority himself prior to the date of passing the detention order. In this regard, drawing the attention of this Court to the affidavit submitted by the Sponsoring Authority to the Detaining Authority, the learned counsel for the petitioner demonstrated that the Detaining Authority attested the affidavit filed by the sponsoring authority on 28.08.2017 and passed the detention order on 29.08.2017. The learned counsel for the petitioner further submitted that the attestation made by the Detaining Authority in the affidavit filed by the Sponsoring Authority would show the predetermination of mind on the part of the detaining authority in passing the order of detention. Hence, the detention order is liable to be set aside.

4. We have heard the learned Additional Public Prosecutor appearing for the State and perused the records carefully.

5. The issue involved in this Habeas Corpus Petition has already been dealt with, elaborately, by this Court in H.C.P.(MD) No.857 of 2016, dated **24.01.2017**, [**Muthukumar @ Vellaian, Vs. The Secretary to Government, Home Prohibition and Excise Department, Secretariat, Chennai – 600 009**], wherein this Court, after having considered various Judgments of this Court as well as the Hon'ble Supreme Court, in Paragraph No.11, has held as follows:-

> "11.Of-course, it is true that the detaining authority is obligated to consider the materials placed before it independently and then to pass order on merits, without influencing the contents set out in the affidavit. However, the detaining authority cannot play a dual role, i.e., in one role he, being as a higher officer, affirms the necessity of the action to be taken and in another role, he, being the detaining authority, passes an order of detention. If the affidavit of the sponsoring authority is signed by some other higher official, then the question of possibility of predetermination would not arise. Since, in this case, the detaining authority played dual role, the contention of the learned

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counsel for the petitioner that the same led to predetermination of mind on the part of the detaining authority, is acceptable.

6. Following the said decision, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in No.53/BCDFGISSSV/2017 dated 29.08.2017 is quashed. The detenu, namely Thanush @ Dineshkumar, S/o.Pakthaseelan, aged 25 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To
1. The Principal Secretary to Government,
   Home, Prohibition & Excise Department,
   Fort St. George,
   Chennai - 600 009.

2. The Deputy Inspector General of Police,
   Madurai Range and the Commissioner of Police,
   Tirunelveli City (Full Additional Charge)
   Tirunelveli

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

4. The 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.

RR

VB/SV/MMS/SAR4/05/01/2018/3P/6C

Order made in
H.C.P.(MD)No.1344 of 2017
Dated: 21.12.2017

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