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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.12.2017

CORAM:

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

H.C.P.[MD].No.1380 of 2017

Muthuselvi : Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Police,
Tirunelveli City.

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

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records relating to the detention order passed by the 2nd respondent in No.40/BCDFGISSSV/2017 dated 19.06.2017 and quash the same and direct the respondents to produce the detenu Nambi, S/o.Sudalai, male aged about 34 years, who is detained at Central Prison, Palayamkottai, before this Court and set him at liberty.

For Petitioner : Mr.M.Saravanan
For Respondents : Mr.C.Ramesh
Additional Public Prosecutor

O R D E R

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

The present Habeas Corpus Petition has been filed by the wife of the detenu - Nambi, S/o.Sudalai, male aged about 34 years. The detenu has been detained, as per the order of the second respondent in No.40/BCDFGISSSV/2017 dated 19.06.2017, under Section 2(f) of the Tamilnadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.

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2. We have heard the learned counsel for the petitioner and the learned State 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 19.06.2017 and passed the detention order on 19.06.2017. 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 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 in No.40/BCDFGISSSV/2017 dated 19.06.2017, passed by the second respondent is set aside and

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the detenu by name, Nambi, S/o.Sudalai, male aged about 34 years, is directed to be released forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

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

ORDER MADE IN
H.C.P.[MD].No.1380 of 2017
06.12.2017

RR
JM/SV MMS/SAR 3/21.12.2017/3P/6C

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