



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.12.2017**

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

AND

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA
H.C.P. (MD) No. 1488 of 2017

Josephine Mary

: Petitioner

Vs.

1. The State of Tamil Nadu,
rep by Principal Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George, Chennai - 600 009.
2. The District Magistrate and District Collector,
Dindigul District,
Dindigul.
3. The Superintendent,
Central Prison,
Madurai.
4. The Inspector of Police,
Dindigul Town South Police Station,
Dindigul.

: 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 relating to the Detention Order passed by the 2nd respondent in Detention Order No.60/2017 dated 30.07.2017 and to quash the same and direct the respondents to produce the body or person of the detenu, Charles @ Thulluvettian, S/o.Selvaraj, aged about 26 years, before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner

: Mr.D.Rameshkumar

For Respondents

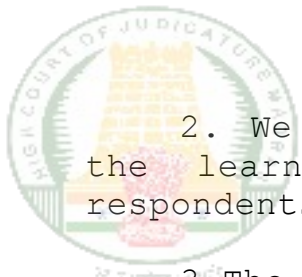
: Mr.C.Ramesh

Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu viz., Charles @ Thulluvettian, S/o.Selvaraj, aged about 26 years. The detenu has been detained, as per the order of the second respondent, dated 30.07.2017 in Detention Order No.60/2017, 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 materials on record would show that the detenu was arrested on 18.06.2017 and the detention order was passed on 30.07.2017. This delay of 1 ½ months remains unexplained, which would vitiate the order of detention.

4. Though a number of grounds have been raised assailing the order of detention, at the time of making submission, the learned counsel for the petitioner submitted that the Detaining Authority, while arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, has relied upon the bail granted in a similar case registered in Crime No.55 of 2016, on the file of Varusanadu Police Station. Though the Detaining Authority has relied upon the bail granted in the said case, he has not furnished a copy of the bail application in CrI.MP.No.46 of 2016 filed in the said case. Therefore, non-furnishing of the document relied on would vitiate the order of detention.

5. In this regard, the learned counsel for the petitioner has also relied upon number of judgments delivered by the Division Benches of this Court, one such case relied upon by the petitioner is **H.C.P.No.2433 of 2015** in the case of **Shanmugavel vs. State of Tamil Nadu**, wherein, this Court, by relying upon the dictum laid down by the Hon'ble Supreme Court in **M.Ahamed Kutty vs. Union of India and another [1990(2) SCC 1]**, has quashed the detention order. The relevant portion from the said judgment reads as follows:

"7. Considering the facts in the instant case, the bail application 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." (Emphasis added)."



6. The said Judgment is squarely applicable to the case on hand also. Therefore, following the dictum laid down by the Hon'ble Supreme Court, we hold that the impugned detention order is vitiated and the same is liable to be set aside.

7. Following the said decision, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order No.60/2017 dated 30.07.2017, is quashed. The detenu, namely Charles @ Thulluvettian, S/o.Selvaraj, aged about 26 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(AE)

/True copy/

Sub Assistant Registrar

To

1. The State of Tamil Nadu,
rep by Principal Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George, Chennai - 600 009.
2. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai -9
3. The District Magistrate and District Collector,
Dindigul District,
Dindigul.
4. The Superintendent,
Central Prison,
Madurai.
5. The Inspector of Police,
Dindigul Town Sough Police Station,
Dindigul.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.Rameshkumar, Advocate Sr.No.92271

NS

VB/MR/SAR3/03/01/2018/3P/8C