



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P (MD) No.174 of 2017

Karthick

: Petitioner

Vs.

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the respondent No.2 in No.09/BCDFGISSSV/2017, dated 27.01.2017 and quash the same and direct the respondents to produce the detenu by name Karthick, S/o.Sankar, aged about 28 years detained in Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

O R D E R

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

The detenu is the petitioner herein. He has been detained by the second respondent by his order in No.09/BCDFGISSSV/2017, dated 27.01.2017, holding him 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.



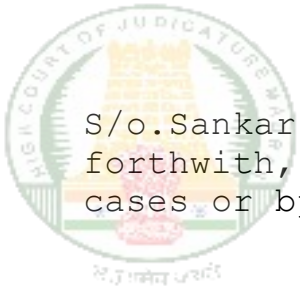
2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.

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 one day 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 25.01.2016 and passed the detention order on 27.01.2017. 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. 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.

5. Following the said decision, this Habeas Corpus Petition is allowed and the impugned detention order in No.09/BCDFGISSSV/2017, dated 27.01.2017, passed by the second respondent is set aside and the detenu, by name, Karthick,



S/o.Sankar, aged about 28 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(C.O.)

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/True Copy/

Sub Assistant Registrar.

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5 The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai-9

ORDER MADE IN
H.C.P (MD) No.174 of 2017
Dated: 23.05.2017

gcg

AM/SKN/SAR 4/05.06.2017/2P/6C