



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.236 of 2017

Y.Boopathy : Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

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

3.The Superintendent,
Central Prison, Madurai District.

: 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 of the impugned order of detention in No.98/BCDFGISSSV/2016 dated 28.12.2016 on the file of the 2nd respondent and quash the same as illegal and to direct the respondents to produce the detenu Markandeyan, Male, aged about 31 years, son of Yosanai, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Sureshkumar

For Respondents : Mr.Mayil Vahana Rajendran
Additional Public Prosecutor

O R D E R

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

The present Habeas Corpus Petition has been filed by the mother of the detenu, namely Markandeyan, aged about 31 years, who has been detained, as per the order of the second respondent in No.98/BCDFGISSSV/2016, dated 28.12.2016, under Section 2(e) of the Tamilnadu Act 14 of 1982, branding him as "Drug Offender". Challenging the same, the petitioner has come up with this Habeas

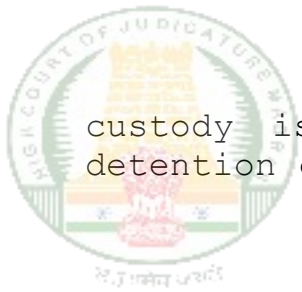
2. We have heard the learned counsel for the petitioner and the learned State Public Prosecutor appearing for the respondents. We have also perused the records carefully.

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 28.12.2016 and passed the detention order on the same day. 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.98/BCDFGISSSV/2016, dated 28.12.2016, passed by the second respondent is set aside and the detenu, by name, Markandeyan, S/o.Yosanai, aged about 31 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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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,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai District.
- 4 The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St.George, Chennai.
- 5.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

+1CC to M/S.R.Suresh Kumar, Advocate, SR.No. 57035

ORDER MADE IN
H.C.P.[MD].No.236 of 2017
23.05.2017

RR

AM/MMS/SAR 4/12.06.2017/3P/7C