



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.273 of 2017

Chandrasekar

... Petitioner

-vs-

1.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,
Office of the Commissioner of Police,
Trichy City, Trichy.

3.The Superintendent,
Central Prison,
Trichy.

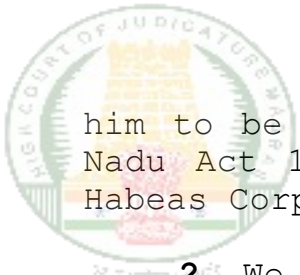
... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the 2nd Respondent in C.No.04/Detention/C.P.O./T.C./2017 dated 01.02.2017 and quash the same and direct the Respondents to produce the body or person of the Detenu namely Madhan @ Madhankumar @ Manikandan, Son of Chandrasekar, aged about 32 years (now detained at Central Prison, Trichy) before this Hon'ble Court and set him at liberty.

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

O R D E R**[Order of the Court was made by M.M.SUNDRESH, J.]**

The petitioner is the father of the detenu, namely, Madhan @ Madhankumar @ Manikandan, son of Chandrasekar, Male, aged about 32 years. The detenu has been detained by the second respondent by his order in C.No.04/Detention/C.P.O/T.C./2017 dated 01.02.2017, 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.

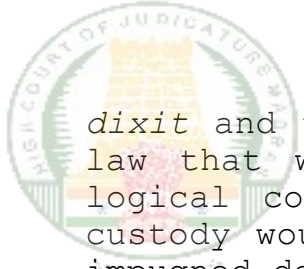
2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel appearing for the petitioner would submit that the petitioner has been remanded to Judicial Custody in connection with the adverse cases 2 to 4 and the ground case. The detenu filed bail application in the ground case in Cr.M.P.No.3054/2016 before the Principal District and Sessions Court, Tiruchirappalli and the same was dismissed on 22.12.2016. Again he filed another bail application in the ground case and the same is pending. Quoting the same, the detaining authority, by relying on a similar case registered in Crime No.297/2016, on the file of the Trichy City Palakkarai Police Station for the offence under Sections 450 and 307 I.P.C., in which the detenu has been granted bail by the Principal District and Sessions Judge, Tiruchirappalli, has come to the conclusion that there is real possibility of the detenu coming out on bail. He would further submit that in the second adverse case, the bail application filed in Cr.M.P.No.320 of 2017 was dismissed by the Judicial Magistrate No.III, Tiruchirappalli and in that case he has not filed any fresh application. Further, he has not filed any bail petition in respect of the 3rd and 4th adverse cases. However, without any material, the detaining authority came to the conclusion that there is real possibility of the detenu coming out on bail.

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Admittedly, the bail application filed in the 2nd adverse case was dismissed on 30.01.2017, where in the detenu has not filed any fresh bail application. Further, in the 3rd and 4th adverse cases, no bail application has been filed so far. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail would be a mere ipse



dixit and that would vitiate the order of detention. It is a trite law that when no bail application is pending then it is only a logical conclusion that there is no likelihood of the person in custody would be released on bail. In such view of the matter, the impugned detention order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.No.04/Detention/C.P.O./T.C/2017, dated 01.02.2017, passed by the second respondent is set aside. The detenu, namely, Madhan alias Madhankumar alias Manikandan, son of Chandrasekar, aged about 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To:

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

SJ
TE/KKR/SAR-II : 21/07/2017 : 3P/6C

H.C.P. (MD) No.273 of 2017
06.07.2017