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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.06.2017
CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

H.C.P (MD) No.384 of 2017

M.Selvi : Petitioner
Vs.

1.State represented by,
The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

2.The Principal Secretary to Government,
Home Prohibition and Excise (XIV)
Department, Secretariat,
Chennai-9.

3.State represented by
The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

: Respondents

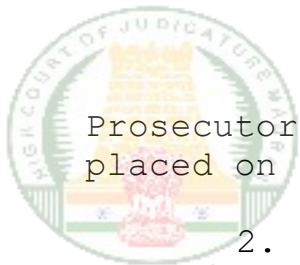
PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas corpus to call for the records from the first respondent in No.12 / BCDFGISSSV/2017 dated 27.02.2017 by setting aside the said order of detention passed by the first respondent and setting the detenu Muthu Krishnan, aged 37 years, S/O.Karuppasamy, at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondents : Mr.C.Ramesh
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]



Prosecutor appearing for the respondents and perused the materials placed on record.

2. The petitioner is the wife of the detenu, who has been detained under Act 14 of 1982 and branded as "Goonda". The petitioner has given two adverse notice of the respondent police and in respect of two cases in Crime No.1248 of 2016 on the file of the Palayamkottai Police Station for the offences under Sections 294(b), 302, 506(ii) of the Indian Penal Code, which case is under investigation and the detenu has not filed bail application. The second case is Crime No.1250 of 2016 on the file of the Palayamkottai Police Station for the offences under Sections 341, 294(b), 387, 307, 506(ii) of the Indian Penal Code, which is also under investigation and the petitioner is not applied for bail.

3. The learned Senior Counsel appearing for the petitioner submitted that the detenu was arrested on 13.12.2016 and however, the order of detention has been passed on 27.02.2017. In the counter affidavit filed by the Deputy Inspector General of Police, Madurai Range and the Commissioner of Police, Tirunelveli City, this fact has been admitted in page 3 paragraph 4(ii).

4. In the order of detention, the detaining authority stated that there is a real possibility of the detenu for coming out on bail by filing bail application, since in similar cases, bail has been granted and that the detenu has been remanded to Judicial custody and he is in custody for more than 60 days. This observation is clearly on account of non-application of mind as the detenu has not moved the bail application in either of the cases. This fact is evident from paragraph four of the Counter affidavit, wherein the tabulated statement has been given, in which it is clearly stated that the detenu has not applied for bail in both the cases. That apart the delay of 74 days in passing the order of detention from the date of arrest ie., from 13.12.2016 to 27.02.2017 is fatal to the very order of detention. Thus, we find that the impugned order of detention is liable to be set aside and the same is hereby set aside. Accordingly this Habeas Corpus petition is allowed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The Commissioner of Police,
Tirunelveli City,
Tirunelveli.



2.The Principal Secretary to Government,
Home Prohibition and Excise (XIV)
Department, Secretariat,
Chennai-9.

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3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

4.The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai-9

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

+One cc to Mr.K.Prabhu, Advocate, SR.No.58437

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ORDER MADE IN

H.C.P (MD) No.384 of 2017

05.06.2017