



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

and

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P(MD)No.51 of 2017

Muthuramalingam

.. Petitioner

Vs.

1. The Principal Secretary to Government,  
Government of Tamilnadu,  
Home, Prohibition and Excise IX,  
Fort St.George, Secretariat,  
Chennai-9.

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

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records of detention order passed in No.04/BCDFGISSSV/2017, dated 05.01.2017, on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Bose, son of Muthuramalingam, aged 23 years, detained at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.J.William Christopher

For Respondents : Mr.C.Ramesh

Additional Public Prosecutor.

### O R D E R

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

The petitioner is the father of the detenu, by name, Bose, aged 23 years. The detenu has been detained by the second respondent, by his proceedings in No.04/BCDFGISSSV/2017, dated 05.01.2017, branding him as a "**Goonda**" under Section 2(f) of the Tamil Nadu Act 14 of 1982. Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.



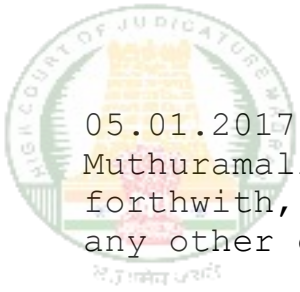
2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records carefully.

3. The 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 05.01.2017 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, passed by the second respondent, in his proceedings in No. 04/BCDFGISSSV/2017, dated



05.01.2017, is quashed. The detenu, namely, Bose, son of Muthuramalingam, aged 23 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(CO)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

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

+1cc to Mr.J.William Christopher, Advocate Sr.No.56533

pjl

vb/mr/sar3/31.05.2017/3p/7c

ORDER MADE IN  
**H.C.P(MD)No.51 of 2017**  
**16.05.2017**