



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

H.C.P. [MD] .No.793 of 2017

N.Kailasam

: Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
 2. The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
 3. The Superintendent,
District Jail and Borstal School,
Pudukkottai.
- : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the respondent No.2 in P.D.No.17/2017, dated 22.05.2017, and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son by name, Manthiramoorthi, S/o.Kailasam, aged about 19 years, now detained in District Jail and Borstal School, Pudukkottai before this Court and set him at liberty forthwith.

For Petitioner

: Mr.K.A.S.Prabhu

For Respondents

: Mr.C.Ramesh

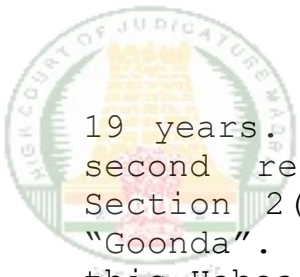
Additional Public Prosecutor

O R D E R

[Order of the Court was made by **R.SUBBIAH, J.**]

<https://hcservices.ecourts.gov.in/hcservices/>

The present Habeas Corpus Petition has been filed by the father of the detenu - Manthiramoorthi, S/o.Kailasam, aged about



19 years. The detenu has been detained, as per the order of the second respondent in P.D.No.17/2017, dated 22.05.2017, under Section 2(f) of the Tamilnadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.

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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. When the matter was taken up for consideration, the learned counsel for the petitioner submitted that in a similar case registered in Crime No.467 of 2014 on the file of Pattukottai Town Police Station for offences under Sections 147, 148, 341, 302 and 120(b) IPC, bail was granted to the accused Surrender alias Sura by the Principal District and Sessions Court, Thanjavur in Cr.M.P.No.4285 of 2014 dated 26.11.2014. Though the Detaining Authority has relied upon the bail granted in the said case, he has not furnished a copy of the bail application in Crl.M.P.No.4285 of 2014. Therefore, non-furnishing of the document relied on would vitiate the order of detention.

4. In this regard, the learned counsel for the petitioner has also relied upon number of judgments delivered by the Division Bench of this Court, one such case relied upon by the petitioner in **H.C.P.No.2433 of 2015** in the case of **Shanmugavel vs. State of Tamil Nadu**, wherein, this Court, by relying upon the dictum laid down by the Hon'ble Supreme Court in **M.Ahamed Kutty vs. Union of India and another (1990 (2) SCC 1)**, has quashed the detention order. The relevant portion from the said judgment reads as follows:

"7. Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case." (Emphasis added)."



5.The said judgment is squarely applicable to the case on hand also. Therefore, following the dictum laid down by the Hon'ble Supreme Court, this Habeas Corpus Petition is allowed and the impugned detention order in P.D.No.17/2017, dated 22.05.2017, passed by the second respondent is set aside and the detenu by name, Manthiramoothi, S/o.Kailasam, aged about 19 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(Records)

/True Copy/

Sub Assistant Registrar

To

1. The State of Tamil Nadu,
Rep by The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.
2. The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
3. The Superintendent,
District Jail and Borstal School,
Pudukkottai.
4. The The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai -9
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

NS

VB/KP/SAR4/31.10.2017/3P/6C

ORDER MADE IN
H.C.P. [MD] .No.793 of 2017
20.10.2017