



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2017

CORAM:

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
and
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P.(MD) No.84 of 2017

Karuppaiah Chettiyar

... Petitioner

-vs-

1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-600 009.

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the 2nd respondent in No.06/BCDFGISSSV/2017 dated 06.01.2017 and quash the same and direct the respondents to produce the body and person of the petitioner's son by name Senthilkumar @ Beggar Senthil, aged 38 years, S/o.Karuppaiah Chettiyar, detained as a Goonda at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Venkatesan

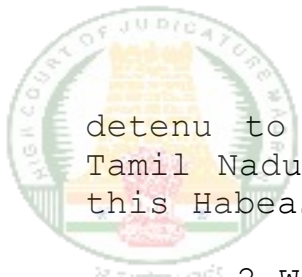
For Respondents : Mr.C.Ramesh

Addl. 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 Senthilkumar @ Beggar Senthil. The detenu has been detained by the 2nd respondent by order in No.06/BCDFGISSSV/2017 dated 06.01.2017, holding the



detenu 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 for the respondents. We have also perused the records produced by the Detaining Authority.

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 06.01.2017. 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. In the result, the Detention Order, passed by the second



respondent, in his proceedings in No.06/BCDFGISSSV/2017 dated 06.01.2017 is quashed. The detenu, namely, Senthilkumar @ Beggar Senthil, S/o.Karuppaiah Chettiyar is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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6. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Secretary to Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Secretariat, 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 of Tamil Nadu
Public (Law & Order),
Fort St. George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ER/AR

TE/RSK/SAR-I : 02/06/2017 : 3P/6C

H.C.P. (MD) No.84 of 2017
23.05.2017