



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.(MD)No.928 of 2017

Pathul Sithika : Petitioner

Vs.

1.The Principal Secretary to Government
Home, Prohibition and Excise Department,
Secretariat
Chennai - 9.

2.The District Collector and District Magistrate
O/o the District Collector and District Magistrate
Theni District, Theni.

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

4.The Inspector of Police,
Cumbum North Police Station,
Cumbum,
Theni District

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records connected with the detention order in Detention Order No.19/2017/C3 dated 14.06.2017 on the file of the respondent No.2 and quash the same and direct the respondents to produce the body and person of the petitioner's husband namely Nijamudeen, S/o.Mohamed Sherif aged 39 years now confined at Central Prison, Madurai before this Court and set him at liberty forthwith.

For Petitioner

: Mr.M.Ajmal Khan
Senior counsel for Mr.J.Lawrence

For Respondents

: Mr.C.Ramesh
Additional Public Prosecutor



ORDER

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

The petitioner is the wife of the detenu viz. Nijamudeen, son of Mohamed Sherif, aged about 39 years. The detenu has been detained, as per the order of the second respondent, dated 14.06.2017, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "Goonda". Challenging the same, the petitioner has come up with this Habeas Corpus Petition.

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

3. When the matter was taken up for consideration, the learned senior counsel for the petitioner, by inviting the attention of this Court to Paragraph No.5 of the detention order, submitted that for slapping the detention order, the Detaining Authority has relied upon two adverse cases and one ground case.

4. In paragraph No.5 of the detention order, it is stated as follows:

"5. I am aware that Thiru. Nijamudeen is lodged in District Jail, Dindigul upto 16.06.2017. He has filed a bail petition in Cr.M.P.No.4212/2017, dated 02.06.2017 in the Judicial Magistrate Court, Uthammapalayam, and that was dismissed. Hence in similar cases, bails are granted by the competent courts after lapse of time. So there is a possibility for him also coming out on bail. If he thus comes out on bail, he will indulge in future activities, which will be prejudicial to the maintenance of public order and public peace. Further, I am well aware that the recourse to normal criminal law would not have the desired effect of effectually preventing him from indulging in such activities, which are prejudicial to the maintenance of public order and public peace. On the materials placed before me, I am satisfied that the said Thiru. Nijamudeen is a 'GOONDA' and there is a compelling necessity to keep him under detention as per the provisions of section 2(f) of Tamil Nadu Act 14/1982 to prevent him from indulging in such activities in future."

5. But the fact remains that the bail application filed in the second adverse case in Cr.M.P.No.4212/2017, was dismissed on 02.06.2017 and however, the same was not mentioned by the Detaining Authority, without looking into the fact that the bail application was filed in the 2nd adverse case was dismissed and in similar case, bail was granted by the competent Court, after lapse of time, which shows the non application of mind by the detaining



authority. Moreover, no details with regard to the adverse case have been filed, which shows that mechanically the detention order was passed, which would vitiate the detention order.

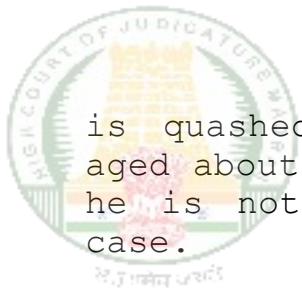
6. That apart, the learned senior counsel for the petitioner submitted that the affidavit filed by the sponsoring authority was attested by the detaining authority himself prior to the date of passing the detention order. In this regard, drawing the attention of this Court to the affidavit submitted 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 13.06.2017 and passed the detention order on 14.06.2017. The learned senior 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.

7. We have heard the learned Additional Public Prosecutor appearing for the State and perused the records carefully.

8. 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. "

9. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order No.19/2017/C3 dated 14.06.2017,



is quashed. The detenu, namely Nijamudeen, S/o.Mohamed Sherif, aged about 39 years, 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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Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The District Collector and District Magistrate
O/o the District Collector and District Magistrate
Theni District, Theni.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai.
- 4.The Inspector of Police,
Cumbum North Police Station,
Cumbum, Theni District
5. The Joint Secretary to Government,
Public (Law & Order),
Fort st.,George, Chennai-9.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2cc to M/S.J.LAWRENCE, Advocate SR.No. 86607, 86821

Order made in
H.C.P. (MD) No.928 of 2017
Dated: 13.11.2017

RR

JM/SV MMS/SAR 4/14.12.2017/4P/9C