



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD) No.1032 of 2016

Chandramathi

: Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai.

: 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 passed in P.D.No.46 of 2016, dated 01.08.2016, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu, namely, Jayakumar @ Kumar, S/o.Kolappan, aged about 43 years, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

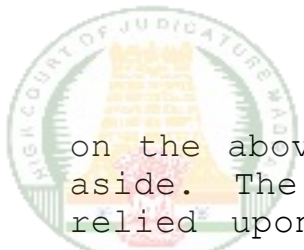
For Respondents : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu - Jayakumar @ Kumar, S/o.Kolappan, aged about 43 years. The detenu has been detained by the second respondent by his order in P.D.No.46 of 2016, dated 01.08.2016, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Though a number of grounds have been raised assailing the order of detention, at the time of making submission, the learned counsel for the petitioner submitted that the Detaining Authority, while arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, has considered only the ground case, whereas, he has failed to consider the adverse cases registered against the detenu, which shows total non-application of mind on the part of the Detaining Authority. Thus,



on the above sole ground, the detention order is liable to be set aside. The learned counsel, in support of his contention, has relied upon the decision of this Court in **Vasanthi Vs.State of Tamil Nadu**, reported in **2013 (4) MLJ (Cr1) 39**.

3. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

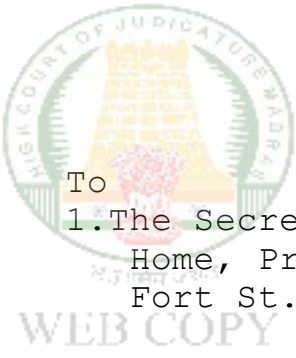
4. As rightly contended by the learned counsel for the petitioner, the observation made by the Detaining Authority in Paragarph No.4 of the Detention Order, simply refers to the ground case and not the adverse cases. Thus, the plea of non-application of mind on the part of the Detaining Authority, as canvassed by the learned counsel for the petitioner, is liable to be sustained. On that score alone, the order of detention is liable to be set aside. Moreover, in **Vasanthi Vs.State of Tamil Nadu**, reported in **2013 (4) MLJ (Cr1) 39**, in similar circumstances, the Division Bench has held as follows:-

"On a careful scrutiny of the impugned order, it is -seen that the detaining authority, taking into account the imminent possibility of the detenu being enlarged on bail in the ground case and the likelihood of the same is prejudicial to the public order and health, has passed the impugned detention order. It is pertinent to note here that the detaining authority, while passing order of detention, has to give consideration to all the material particulars. But to the contrary, in the instant case, the ground case registered in Crime No.166 of 2013 has alone been taken into consideration, thereby omitting to mention the Crime No.165 of 2013, the 4th adverse case, by the authorities concerned, which really shows non application of mind and lethargic attitude on the part of detaining authority. Thus, for the reason stated herein above, the impugned detention order cannot be sustained and is vitiated".

5. Following the above decision, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in P.D.No.46 of 2016, dated 01.08.2016, is quashed. The detenu, namely Jayakumar @ Kumar, S/o.Kolappan, aged about 43 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)



To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil,
Nagercoil.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public(Law and Order)
Fort.St.George, Chennai-9

Order made in
H.C.P. (MD) No.1032 of 2016
Dated:17.02.2017

NB

AAM/MR/SAR1/28.02.2017/3P/6C