



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

H.C.P. (MD) No.1153 of 2016

Pathalam : 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,
Thoothukudi District,
Thoothukudi.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

: 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 H.S.(M) Confdl.No.39/16, dated 09.08.2016 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 Pathalam, S/o.Sethuraman, aged about 23 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 detenu- Pathalam, S/o.Sethuraman, aged about 23 years. The detenu has been detained by the second respondent by his order in H.S.(M) Confdl.No.39/16, dated



09.08.2016, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. Challenging the same, he has come up with the present petition.

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, in paragraph No.7 of the grounds of detention, has referred to the similar case registered in Crime No.69 of 2013, on the file of Tirunelveli Taluk Police Station, for offences under Sections 147, 148, 341, 294(b), 12(b), 302 IPC r/w Section 3(2)(v) of SC&ST (Prevention of Atrocities) Act and in the said case, bail was granted to the accused Bothervellai, by this Court, vide CrI.O.P.(MD)No.8812 of 2013. Though the Detaining Authority has referred to the similar case particulars in the grounds of detention, the documents relating to similar case were not at all furnished to the detenu. Therefore, non-furnishing of entire documents relating to similar case would vitiate the order of detention. Hence, on that ground, the detention order is liable to be set aside.

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

4. In our considered opinion, the Detaining Authority, while relying upon the similar case particulars, for clamping the order of detention as against the detenu, ought to have furnished the entire documents relating to the similar case, so as to enable the detenu, to challenge the order of detention in an effective manner. The failure to do so would vitiate the order of detention. Therefore, on that score alone, the order of detention is liable to be set aside.

5. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in H.S.(M)Confdl.No.39/16, dated 09.08.2016, is quashed. The detenu, namely Pathalam, S/o.Sethuraman, aged about 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(RTI)

/True Copy/

Sub Assistant Registrar



To

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

JAM/20.02.17 /SV-MMS/ 3p-6c

Order made in
H.C.P. (MD) No. 1153 of 2016
Dated: 09.02.2017