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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.01.2017**

CORAM:

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

H.C.P.(MD)No.1182 of 2016

Sankarapandi : 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 Commissioner of Police,
Tirunelveli City,
Tirunelveli.

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 No.23/BCDFGISSSV/2016, 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 Sankarapandi, S/o.Mahendran, aged about 22 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

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ORDER

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

The petitioner is the detenu - Sankarapandi, S/o.Mahendran, aged about 22 years. The detenu has been detained by the second respondent by his order in No.23/BCDFGISSSV/2016, dated 09.08.2016, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Though the detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that in the fourth adverse case registered in Crime No.401 of 2015, the detenu obtained an order of bail and the bail order was made ready on 10.08.2016, but, whereas, the detention order was passed on 09.08.2016. However, the Detaining Authority, while arriving at the subjective satisfaction with regard to the likelihood of the detenu coming out on bail, has relied on the bail granted in the fourth adverse case, which was made ready on 10.08.2016. When the detention order was passed prior to the bail order, the Detaining Authority ought not to have mentioned it or at least, there should be an additional affidavit by the Sponsoring Authority enclosing the bail order granted in Crime No.401 of 2015. But, there is no such additional affidavit available, which shows non-application of mind on the part of the Detaining Authority.

3. We find some force in the above said submission made by the learned counsel for the petitioner, because, as rightly contended by the learned counsel for the petitioner, the detention order was passed on 09.08.2016 and the bail order relied on by the Detaining Authority was made ready on 10.08.2016 and if that is so, either the Detaining Authority ought to have omitted to rely upon the same or an additional affidavit enclosing the order should be filed. In this case, nothing has been done. This shows pre-determination of mind on the part of the Detaining Authority in passing the order of detention against the detenu. Therefore, on that ground, the detention order is liable to be set aside.

4. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in No.23/BCDFGISSSV/2016, dated 09.08.2016, is quashed. The detenu, namely Sankarapandi, S/o.Mahendran, aged about 22 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 (Crl.Side)

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Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

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

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

4. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort.St.Geroge, Chennai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

GJM/MP/VR/31.1.17-3p-6c

Order made in
H.C.P.(MD)No.1182 of 2016
Dated: 12.01.2017

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