



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2017

CORAM:

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

H.C.P. (MD) No.1236 of 2016

Arul Francis

: Petitioner

Vs.

1. The State of Tamil Nadu,
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
2. The District Collector and District Magistrate,
Ramanathapuram District,
Ramanathapuram.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

: Respondents

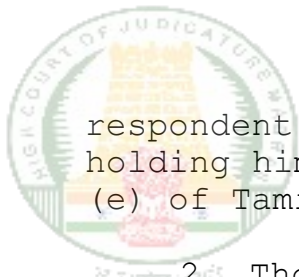
PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records in connection with the detention order passed in Cr.M.P.No.33/D.O./2016, dated 01.09.2016, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband, namely, Denny @ Densingh, S/o.Raju, aged 50 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.B.Pandiarajan

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

ORDER

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



respondent by his order in Cr.M.P.No.33/D.O./2016, dated 01.09.2016, holding him to be a "Drug Offender", as contemplated under Section 2 (e) 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 relied upon the bail granted in a similar in CrI.OP.No.17445 of 2015, dated 05.09.2015. Though the Detaining Authority has relied upon the bail granted in the said case, he has not furnished a copy of the bail application in CrI.OP.No.17445 of 2015, dated 05.09.2015 filed in the said case. Therefore, non-furnishing of the document relied on would vitiate the order of detention.

3. In this regard, the learned counsel for the petitioner has also relied upon number of judgments delivered by the Division Benches of this Court, one such case relied upon by the petitioner is **H.C.P.No.2433 of 2015** in the case of **Shanmugavel vs. State of Tamil Nadu**, wherein, this Court, by relying upon the dictum laid down by the Hon'ble Supreme Court in **M.Ahamed Kutty vs. Union of India and another [1990 (2) SCC 1]**, has quashed the detention order. The relevant portion from the said judgment reads as follows:

"7. Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case." (Emphasis added)."

4. The said Judgment is squarely applicable to the case on hand also. Therefore, following the dictum laid down by the Hon'ble Supreme Court, we hold that the impugned detention order is vitiated and the same 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 Cr.M.P.No.33/D.O./2016, dated 01.09.2016, is quashed. The detenu, namely Denny @ Densingh, S/o.Raju, aged 50



years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

WEB COPY

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

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

NB

TE/PM : 10/03/2017 : 3P/6C

Order made in
H.C.P. (MD) No. 1236 of 2016
Dated: 01.03.2017