



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P.(MD) No.1267 of 2016

Sumathi

... Petitioner

-vs-

1. State of Tamil Nadu, rep.by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George, Chennai-9
2. The District Collector and
District Magistrate,
O/o.The District Collector and
District Magistrate,
Sivaganga District, Sivaganga
3. The Superintendent,
Central Prison,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to call for the entire records in detention order passed in Cr.M.P.No.26/Goonda/2016, dated 08.09.2016, 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 son, namely, Rajesh @ Ramaiahrajan, son of Selvendran, male, aged 28 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty.

For Petitioner : Mr.D.Balamuruga Pandi
For Respondents : Mr.C.Ramesh
Addl. Public Prosecutor

O R D E R**[Order of the Court by T.S.SIVAGNANAM, J.]**

<https://hcservices.ecourts.gov.in/hcservices> The petitioner is the mother of the detenu, namely, Rajesh @ Ramaiahrajan, son of Selvendran, aged 28 years. The detenu has been detained by the second respondent by his order in

Cr.M.P.No.26/Goonda/2016, dated 08.09.2016, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that the Detaining Authority relied upon the bail order passed in a similar case in respect of one Sathiyar, in a case in Crime No.213 of 2016, registered by Sivaganga Town Police. By referring to the booklet filed along with the counter affidavit of the second respondent, more particularly Page No.101, the learned counsel for the petitioner pointed out that the bail order in respect of the said Sathiyar alone had been furnished to the petitioner. This Court, in several decisions following the Honourable Supreme Court, has held that bail application filed in a similar case is a vital document and non-supply of a copy of the same to the detenu has an effect of vitiating the detention order.

4. The learned Additional Public Prosecutor appearing for the respondents submitted that furnishing of bail application filed in a similar case to the detenu is nothing but a re-production and there is no error in the order of detention.

5. After hearing the learned counsel appearing for the parties and perusing the materials placed on record, we are unable to accept the submissions of the learned Additional Public Prosecutor for more than one reason. Firstly, the Honourable Supreme Court, in the case of **M.Ahamed Kutty vs. Union of India and another**, reported in **1990 (2) SCC 1**, has considered a similar issue and held that bail application and bail orders in a similar case are vital documents for consideration and denial of those documents would affect the detenu's rights to make an effective representation and it will result in violation of Article 22(5) of the Constitution of India.

6. That apart, this Court in **Jarinabegam v. State of Tamil Nadu by Secretary to Government, Prohibition and Exercise Department, Chennai and another**, reported in **(2007) 1 MLJ (Crl) 18**, relying upon the decision of the Honourable Supreme Court in **Ahamed Kutty** (cited supra), has held that non-supply of copy of the bail application filed in a similar case to the detenu has the effect of vitiating the order of detention.

7. A similar view has been taken by this Court in **Vijayalakshmi vs. State of Tamil Nadu and others** (H.C.P.(MD) No.1067 of 2016, dated 23.12.2016).



8. Thus, in the instant case, the bail application, which is a vital document, filed in a similar case had not been furnished to the detenu and non-supply of the same to the detenu has the effect of vitiating the impugned order of detention. Therefore, on that ground itself, the impugned order of detention passed by the second respondent is liable to be quashed.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.26/Goonda/2016, dated 08.09.2016, passed by the second respondent is set aside. The detenu, namely, Rajesh @ Ramaiahrajan, son of Selvendran, dated 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St.George, Chennai-9.
 2. The District Collector and
District Magistrate,
O/o.The District Collector and
District Magistrate,
Sivaganga District, Sivaganga.
 3. The Superintendent,
Central Prison, Madurai.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- + 1 CC TO Mr.D.BALAMURUGA PANDI, ADVOCATE IN SR No. 17447

KRK
TE/KP/SAR-IV : 07/04/2017 : 3P/6C

H.C.P. (MD) No.1267 of 2016
23.03.2017