

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 02.06.2017

CORAM

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

H.C.P(MD)No.1345 of 2016

Muniyammal

: Petitioner

Vs.

1. State rep. By Principal Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Secretariat, Chennai-9.

2. The District Magistrate and
District Collector,
Virudhunagar District.

3. The Superintendent of Prison,
Central Prison, Madurai.

: Respondents

This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Habeas Corpus, calling for the records relating to the impugned detention order bearing Cr.M.P.(MD)No.11 of 2016 dated 21.09.2016 passed by the second respondent and quash the same and consequently direct the respondents to set the petitioner's son/detenué namely Durai @ Duraipandi Son of Irulandi Thevar, aged about 37 at liberty from Central Prison, Madurai.

For Petitioner : Mr.T.Antony Arul Raj

For Respondents : Mr.C.Ramesh,
Additional Public Prosecutor**ORDER**(Order of the Court was made by **T.S.SIVAGNANAM**)

Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

2. The petitioner is the mother of the detenu, who has filed this Habeas Corpus Petition to quash the order of detention passed against her son Durai @ Duraipandi branding him as a



"Goonda" vide proceedings in Cr.M.P.(MD)No.11 of 2016 dated 21.09.2016.

3. The detenu has come to adverse notice of the respondents in three cases. The point for consideration in the instant case is whether the Detaining Authority was entitled to deal with the representation of the detenu, after he had forwarded all the papers for approval on 26.09.2016 and approval was granted by the Government in G.O.Rt. No.4748 dated 02.10.2016. The said issue is no longer res integra and was settled by the Division Bench of this Court in Ravindran v. State of Tamil Nadu (2009) 1 LW CrI.99. In the said case, the detenu was branded as a Goonda and an order of detention dated 04.04.2008 was passed. A representation was sent to the Detaining Authority on 12.04.2008 and the same was rejected on 24.04.2008 and in the meantime, the file was forwarded to the Government and the order of detention was approved by the Government on 15.04.2008. The contention of the petitioner therein was that when the entire file was despatched to the Government, if any representation is received by the Detaining Authority, he should forward the said representation to the Government for necessary action. But the Detaining Authority himself considered the representation on 24.04.2008 ie., after the approval of the detention by the Government on 15.04.2008, which has prejudiced the detenu and taken away the valuable right guaranteed under the Constitution of India.

4. The petitioner therein relied upon the decision of the Division Bench in the case of Rajeswari v. the Secretary to the Government, Prohibition and Excise Department and another [(2006) 1 LW CrI.369]. The Division Bench, after taking into consideration Section 3(3) of the Tamil Nadu Act 14 of 1982 and taking note of the observation made in the case of Rajeswari (supra) as well as in the case of Puranlal Lathanlal v. Union of India (1958 CrI.L.J.283) held that the Detaining Authority exceeded in his powers and has erroneously taken up the exercise of dealing with the representation and the representation having not been considered by the Government, the detenu has greatly prejudiced and his valuable right has been taken away, which vitiates the ultimate order of detention.

5. The above referred decision would apply to full force in the present case, as it is borne out by records that the entire file was despatched by the Detaining Authority to the Government on 26.09.2016 and the Detaining Authority has only a power for a period of 12 days. On receipt of the files by the Government, the Government has approved the same on 02.10.2016. Therefore, the detaining authority would not have dealt with the petitioner's representation, after the date of approval by the Government. Applying the law laid down in the decisions aforementioned, we hold that the impugned order of detention is liable to be quashed.



6. In the result, this Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.11 of 2016 dated 21.09.2016 is hereby quashed. The detenu, namely, Durai @ Duraipandi, son of Irulandi Thevar, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise (IX) Department,
Secretariat, Chennai-9.
2. The District Magistrate and
District Collector,
Virudhunagar District.
3. The Superintendent of Prison,
Central Prison, Madurai.
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Secretariat, Chennai-09.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S. T.ANTONY ARULRAJ, Advocate, SR.No.58170.

H.C.P (MD) No.1345 of 2016
02.06.2017

SDS/SV/SAR 1/09.06.2017/3P/7C