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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**
and
THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

H.C.P.(MD) No.1705 of 2016

M.Vanmathi ... Petitioner

-vs-

1. State of Tamil Nadu, rep.by
The Principal Secretary to Government
Home, Prohibition and Excise (XVI) Department
Secretariat, Chennai-600 009
2. The District Magistrate
District Collector
O/o.The District Magistrate and District Collector
Pudukottai District, Pudukottai
3. The Superintendent
Central Prison, Tiruchirappalli ... 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, connected with the detention order passed in P.D.O.No.30/2016, dated 13.12.2016, on the file of the second respondent and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely, Murugaraj, son of Dharmaraj, aged about 38 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.G.Arun Kumar
For Respondents : Mr.C.Ramesh
Addl. Public Prosecutor

O R D E R

[Order of the Court by **M.V.MURALIDARAN, J.**]

The petitioner is the wife of the detenu - Murugaraj, aged about 38 years. The detenu has been detained by the second respondent by his order in P.D.O.No.30/2016, dated 13.12.2016, holding him to be a "Goonda", as contemplated under Section 2(f) of the 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.

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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 there is no compelling necessity to detain the detenu under the prevention of Tamil Nadu Act 14 of 1982.

4. The learned counsel appearing for the petitioner / detenu would submit that the mandatory provisions were not followed by the respondents in clamping the detention order. According to him, there could be no compelling necessity based on the materials placed before the detaining authority and there is non-application of mind in passing the impugned detention order. He has also drew the attention of this Court to Paragraph No.5 of the impugned detention order, wherein the second respondent has stated that the Sponsoring Authority stated that in this case, the relatives of the detenu are taking steps to release the accused on bail by filing bail petition. This according to the learned counsel appearing for the petitioner is bereft of particulars without any materials, which vitiates the impugned order of detention.

5. The learned Additional Public Prosecutor appearing for the respondents would submit that the order of detention has been passed in due consideration of fact and law with a view to curtail his prejudicial activities and to maintain public order and therefore, it does not warrant interference by this Court.

6. In order to clamp detention order, there should be compelling necessity / subjective satisfaction on the part of the detaining authority and it should not be vitiated on the ground of non-application of mind, since the detention order is preventive in nature and not punitive. However, in this case, though the second respondent has stated that the relatives of the accused are taking steps to release the accused on bail by filing bail petition, he has not produced any documents in support of such contention, which would show only non-application of mind on the part of the detaining authority, in having compelling necessity / subjective satisfaction, which vitiates the impugned detention order. As preventive detention relates to curtailing of personal liberty guaranteed under Articles 19 and 21 of the Constitution, it is the duty of the respondents to comply with the mandatory provisions. The impugned detention order is, therefore, liable to be quashed.

<https://hcservices.ecourts.gov.in/hcservices/>

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.O.No.30/2016, dated 13.12.2016,



passed by the second respondent is set aside. The detenu, namely, Murugaraj, son of Dharmaraj, aged about 38 years, is directed to be released forthwith unless his detention is required in connection with any other case.

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Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To:

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

+1cc to M/S.K.G.ARUNKUMAR, Advocate SR.No. 56585

H.C.P.(MD) No.1705 of 2016
16.05.2017

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