



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P.(MD)No.882 of 2016

Chellappan

: 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 District Collector and District Magistrate,
Kanniyakumari District at Nagercoil,
Nagercoil.
 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 P.D.No.36/2016 dated 29.06.2016 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Gunasekaran @ Gunasekar @ Dunasekar @ Sekar, S/o.Chellappan, aged about 39 years, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner

: Mr.N.Pragalathan

For Respondents

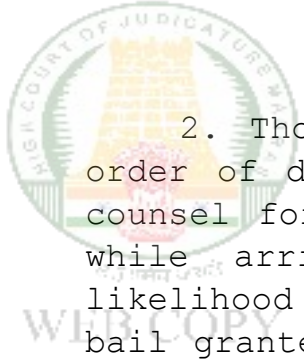
: Mr.C.Mayilvahana Rajendran,

Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu - Gunasekaran @ Gunasekar @ Dunasekar @ Sekar, S/o.Chellappan, aged about 39 years. The detenu has been detained by the second respondent by his order in P.D.No.36/2016 dated 29.06.2016, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

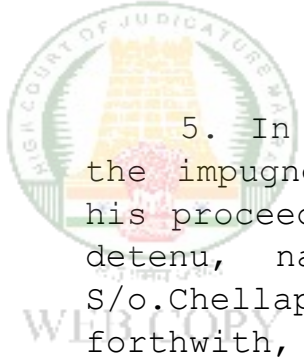


2. Though a number of grounds have been raised assailing the order of detention, at the time of making submission, the learned counsel for the petitioner submitted that the Detaining Authority, while arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, has relied upon the bail granted in a similar case registered in Crime No.202 of 2016, on the file of Boothapandy Police Station, for the offences under Sections 294(b), 324, 307 and 506(ii) of the Indian Penal Code. Though the bail application was furnished in the book let, the Detaining Authority has not furnished the bail order. Therefore, non-furnishing of the bail order 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 detenu 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 P.D.No.36/2016 dated 29.06.2016, is quashed. The detenu, namely Gunasekaran @ Gunasekar @ Dunasekar @ Sekar, S/o.Chellappan, aged about 39 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()

/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,
Kanniyakumari District at Nagercoil,
Nagercoil.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George,
Chennai-600009.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P. (MD) No.882 of 2016
Dated: 05.01.2017

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