



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2018

CORAM:

WEB COPY

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P. (MD) No.406 of 2018

Vallinayagam

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep.by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort, St.George,
Chennai 600 009.
- 2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

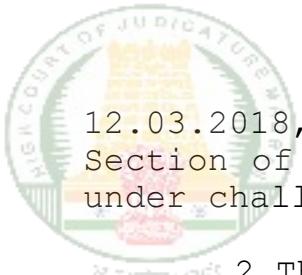
PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus calling for the records connected with the detention order passed in H.S.(M).Confdl. No.09/18, dated 12.03.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Vallinayagam, aged about 28 years, son of Palavesakannu Thevar now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.V.Neelakandan,
Additional Public Prosecutor

ORDER

(Order of the Court was made by C.T.SELVAM,J.)

<https://hcservices.ecourts.gov.in/hcservices/>
The petitioner is the detenu - Vallinayagam, aged about 28 years, S/o.Palavesakannu Thevar. The detenu has been detained by the second respondent, by his order in H.S.[M] confdl.No.09/2018, dated



12.03.2018, holding him to be a "Goonda", as contemplated under Section of 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. Though the order of detention has been assailed on several grounds, learned counsel for petitioner mainly relies on the contention that representation made by detenu for revocation of order of detention was not considered within a reasonable time and such enormous delay in considering the representation amounts to denial of reasonable opportunity vitiating the order of detention.

3. Learned counsel for petitioner further submits that after detention order is approved by State Government, Detaining Authority, which is other than the State Government, becomes functus officio and the rejection of representation made by petitioner on behalf of detenu should have been made only by the State Government and not by Detaining Authority. The representation made by the detenu came to be rejected not by the State Government, but by the Detaining Authority, after the Government approved the order of detention. On that ground also, the order of detention stands vitiated.

4. We also heard the submissions made by the learned Additional Public Prosecutor on the above said contentions raised on behalf of the petitioner.

5. As rightly contended by the learned counsel for the petitioner, the Detaining Authority, after the detention order was approved by the Government, ought to have transmitted the representation to the Government for the consideration of the Advisory Board and orders by the Government. The very fact that the Detaining Authority chose to pass an order of rejection after the detention order was approved by the Government, will show exercise of power, which is not conferred on the Detaining Authority. On that score alone, the order of detention is liable to be set aside.

6. In the result, the Detention Order, passed by the second respondent, in his proceedings in H.S.[M] confdl.No.09/2018, dated 12.03.2018, is quashed. The detenu, namely, Vallinayagam, son of Palavesakannu Thevar, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

7. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar



To

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

NBJ

DS/SKN-RSK/SAR- 4 :18.06.2018: 3P/6C

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