



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM

and

THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P. (MD) No.48 of 2018

N.Murugeswari

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Home, Prohibition and Excise (XIV) Department,
Fort St.George,
Chennai 600 009.
- 2.The District Magistrate cum District Collector,
Virudhunagar District,
Virudhunagar.
- 3.The Superintendent of Police,
Central Prison,
Madurai.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records of the detention order of the 2nd respondent in proceedings in Cr.M.P.No.53/2017, dated 28.12.2017 and quash the same and consequently direct the respondents to produce the detenu namely Nepoliyan, son of Mariappan before this Court who is detained at Central Prison, Madurai and set him at liberty.

For Petitioner : Mr.M.Kannan

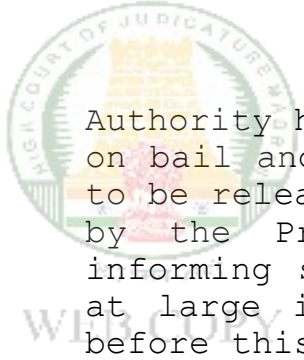
For Respondents :Mr.V.Neelakandan, APP

ORDER

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

The petitioner is the wife of the detenu - Nepoliyan, son of Mariappan, aged about 42 years. The detenu has been detained by the second respondent by the impugned Detention Order Cr.M.P.No.53/2017 dated 28.12.2017, holding him to be a "Sand Offender", as contemplated under Section 2(gg) of Tamil Nadu Act 14 of 1982.

2.Though several grounds have been raised in the Habeas Corpus Petition, learned counsel for petitioner would mainly focus his argument on the ground that the impugned order of detention suffers from non-application of mind. In that, the Detaining



Authority has considered, real possibility of detenu, being released on bail and has arrived at conclusion of real possibility of detenu to be released on bail, placing reliance on an order of bail, passed by the Principal District and Sessions Court, Srivilliputhur, informing such case to be similar in nature. Pre-determination is at large in that while the bail application moved by the detenu before this Court in CrI.O.P.(MD)No.18015 of 2017 was dismissed only on 28.12.2017. Such position is informed in the order of the Detaining Authority of the event date ie., 28.12.2017. The Detaining Authority has further stated that there is real possibility of the detenu coming out on bail by filing further bail application before the Higher Court, which, according to the learned counsel for the petitioner, shows total non-application of mind on the part of the Detaining Authority, which vitiates the order of detention.

3. We have considered the above submissions.

4. An identical issue was considered by a Division Bench of this Court in **T.Chitra Vs. State of Tamil Nadu**, reported in **2014 (2) MLJ CrI 72** and the order of detention was set aside on the ground of non-application of mind. Hence, following the said order, the Detention Order, passed by the second respondent, in his proceedings in Detention Order No.Cr.M.P.No.53/2017 dated 28.12.2017, is quashed. The detenu, namely, Nepoliyan, son of Mariappan, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

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

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
Home, Prohibition and Excise (XIV) Department,
Fort St.George,
Chennai 600 009.

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

3.The Superintendent of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
Central Prison,
Madurai.



4. The Joint Secretary to GOVERNMENT Public (Law & Order)
Fort Saint George, Chennai-9.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Nbj
KK/KKR/SAR 3/17/05/2018/3P/6C

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