



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.07.2018
CORAM:

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

H.C.P. (MD) No. 749 of 2018

M.Muppidathi

... 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,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S.Confdl.No.41/2018 dated 15.05.2018 on the file of the 2nd respondent and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Murugan, aged about 45 years, son of Shanmugam, 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, APP

ORDER

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

The petitioner is the wife of detenu - Murugan, son of Shanmugam. The detenu has been detained by the second respondent by the impugned Detention Order in M.H.S.Confdl.No.41/2018 dated 15.05.2018 holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) 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 on the ground that towards informing imminent possibility of detenu being released on bail, the Detaining Authority has relied on similar case theory. Admittedly, such documents have not been supplied to the detenu, as it did not form part of the booklet furnished by the prosecution. Therefore, non supply of copy of the bail application in similar case to the detenu would vitiate the impugned detention order.

3. We have considered the above submissions.

4. The Hon'ble Supreme Court in **M.Ahamed Kutty Vs. Union of India and another (1990(2) SCC 1)** has observed thus:

"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."

5. In the facts and circumstances of the present case, non supply of the copy of the bail application in similar case, to the detenu has the effect of vitiating the impugned detention order. Further due to non supply of such a vital document, the detenu has lost valuable right to make an effective representation to the authorities concerned.

6. In the light of the above said principles laid down by the Hon'ble Supreme Court in **M.Ahamed Kutty's** case, the Detention Order, passed by the second respondent, in his proceedings in Detention Order in M.H.S.Confdl.No.41/2018, dated 15.05.2018, is quashed. The detenu, namely, Murugan, son of Shanmugam, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.



In the result, we allow the Habeas Corpus Petition.

Sd/-
Assistant Registrar (AS)

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/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort, St. George,
Chennai 600 009.
2. The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort. St. George,
Chennai - 9.
5. The Addl. Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Nbj
MK/RP/SAR 1/07.09.2018/3P/6C

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