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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2018

CORAM:

**THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED**

H.C.P(MD)No.788 of 2018

Selvi

: Petitioner

Vs.

1. State of Tamil Nadu,
Rep by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Secretariat,
Chennai - 600 009.

2. The District Collector and District Magistrate,
Ramanthapuram District, Ramanathapuram.

3. The Superintendent,
Central Prison, Madurai.

: Respondents

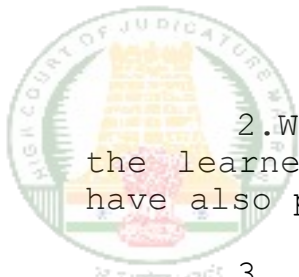
PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the records, pertaining to the proceedings of the second respondent made in his proceedings in Cr.M.P.No.13/Goonda/2018, dated 14.03.2018 and quash the same and set the petitioner's son by name "Balakumar @ Balamurugan, S/o.Sundarapandi, aged about 23 years" at liberty from Central Prison, Madurai/third respondent.

For Petitioner : Mr.A.Uthayakumar
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner is the mother of the detenu - Balakumar @ Balamurugan, S/o.Sundarapandi, aged about 23 years. The detenu has been detained by the second respondent by his order in Cr.M.P.No.13/Goonda/2018, dated 14.03.2018, holding him to be a "Goonda", as contemplated under Section 2(f) of 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 for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that the translated version of the bail order has not been furnished in the form of booklet to the detenu, which amounts to denial of reasonable opportunity to the detenu to make an effective representation.

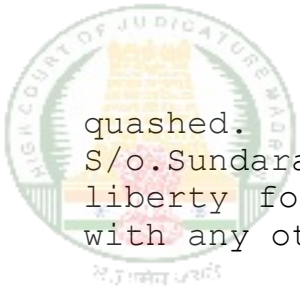
4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though translated version of the bail order has not been furnished to the detenu, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. Similar issue came up for consideration before this Court in **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)."

6. 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 same is liable to be set aside.

7. In the result, the Habeas Corpus Petition shall stand allowed and the Detention Order passed by the second respondent, in his proceedings in Cr.M.P.No.13/Goonda/2018, dated 14.03.2018, is



quashed. The detenu, namely, Balakumar @ Balamurugan, S/o.Sundarapandi, aged about 23 years, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

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Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-)

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Secretariat,
Chennai - 600 009.
 2. The District Collector and District Magistrate,
Ramanthapuram District, Ramanathapuram.
 3. The Superintendent,
Central Prison, Madurai.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- + 1 CC TO Mr.A.UTHAYAKUMAR, ADVOCATE IN SR No. 72212

NB

TE/SKN-RSK/SAR-4 : 30/07/2018 : 3P/6C

ORDER MADE IN
H.C.P (MD) No.788 of 2018
Dated:11.07.2018