



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19.01.2018

Coram :-

THE HON'BLE DR.JUSTICE S.VIMALA

and

THE HON'BLE MRS.JUSTICE T.KRISHNAVALLI

Habeas Corpus Petition (MD) No.1404 of 2017

Kanthaiah

... Petitioner

-vs-

1. State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.

2. The District Collector and
District Magistrate,
Tirunelveli District,
Tirunelveli.

3. The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

Prayer: Writ petition under Article 226 of the Constitution of India is filed praying for issuance of a writ of Habeas Corpus, calling for the entire records with the detention order passed in M.H.S Confdl No.93/2017 dated 05.09.2017 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, Kanthaiah, aged about 39 years, S/o. Esakkimuthu Thevar now detained at Central Prison, Palayamkottai before this Honourable Court and set him at liberty forthwith.

For petitioner : Mr.N.Pragalathan

For respondents : Mr.C.Ramesh

Addl. Public Prosecutor

O R D E R

(Order of the Court was made by
S.Vimala,J.,)

The petitioner is the detenu himself. The detenu has been branded as a "Goonda" as contemplated under Tamil Nadu Act 14 of 1982 and is now detained under order of the 2nd respondent passed in M.H.S Confdl No.93/2017 dated 05.09.2017. The said order is under challenge in this petition.



2. The learned counsel for the petitioner would submit that in an adverse case registered against the detenu in Crime No.231 of 2014, bail was already granted to the detenu by the learned Principal Sessions Judge, Tirunelveli in Cr.M.P.Nos.3015 & 3016 of 2014 on 02.07.2014, but whereas the detaining authority, in the detention order has stated that there is a real possibility of the detenu coming out on bail in the said crime number and therefore, it is clear that there is non application of mind on the part of the detaining authority.

2.1. The other ground raised by the learned counsel for the petitioner to assail the impugned detention order is that the affidavit filed by the sponsoring authority was attested by the detaining authority himself on the date of passing the detention order. In this regard, drawing the attention of this Court to the affidavit submitted by the Sponsoring Authority to the Detaining Authority, the learned counsel for the petitioner demonstrated that the Detaining Authority attested the affidavit filed by the sponsoring authority and passed the detention order on 05.09.2017. The learned counsel for the petitioner further submitted that the attestation made by the Detaining Authority in the affidavit filed by the Sponsoring Authority would show the predetermination of mind on the part of the detaining authority in passing the order of detention.

2.2. In support of his contention that on earlier occasion, the order passed by the detaining authority with predetermined mind was quashed by this Court, the learned counsel relied on the judgment of this Court in the case of *Muthukumar @ Vellaian, Vs. The Secretary to Government, Home Prohibition and Excise Department, Secretariat, Chennai - 600 009* reported in (2017) 2 MLJ (Cr1) 146, wherein this Court, after having considered various Judgments of this Court as well as the Hon'ble Supreme Court, in Paragraph No.11, has held as follows:-

"11.Of-course, it is true that the detaining authority is obligated to consider the materials placed before it independently and then to pass order on merits, without influencing the contents set out in the affidavit. However, the detaining authority cannot play a dual role, i.e., in one role he, being as a higher officer, affirms the necessity of the action to be taken and in another role, he, being the detaining authority, passes an order of detention. If the affidavit of the sponsoring authority is signed by some other higher official, then the question of possibility of predetermination would not arise. Since, in this case, the detaining authority played dual role, the contention of the learned counsel for the petitioner that the same



led to predetermination of mind on the part of the detaining authority, is acceptable. "

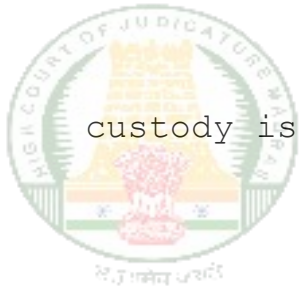
2.3. In support of his submission that the order passed without application of mind is liable to be set aside, learned counsel cited a judgment of this Court in the case of *S.Sathiya vs. State (H.C.P. (MD) No. 466 of 2013)* decided on 03.07.2013, wherein it has been held as under:

"6. On a careful scrutiny of the impugned order, it is seen that the detaining authority, taking into account the imminent possibility of petitioner being enlarged on bail and the likelihood of the same is prejudicial to the public order and health, has passed the impugned detention order. It is pertinent to note here that when the bail petition filed by the detenu is pending before the learned Special Judge for E.C.Act Cases, how the detaining authority has taken a decision to detain a person without applying his independent mind, which really shows the lethargic attitude on the part of detaining authority. Further, the failure on the part of detaining authority to consider the possibility or otherwise of the detenu being granted bail in adverse cases would also reflect non application of mind. Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained and is vitiated in law."

Hence, it is prayed that the detention order is liable to be set aside on the grounds stated supra.

3. We find force in the contention raised by the learned counsel for the petitioner. A perusal of the detention order and the typeset of papers of the detaining authority would reveal that the detaining authority had attested the affidavit filed by the Sponsoring Authority and played a dual role, which is evidentially obvious that there is a possibility of predetermination on the part of the detaining authority. Further, the detaining authority, in a hurried manner, passed the detention order without verifying the fact as to the pendency of the bail petition in respect of Crime No.231 of 2014, in which bail had been granted by the concerned Court below even prior to the passing of detention order. Therefore, there are sufficient grounds to interfere with the impugned detention order and the said order is liable to be quashed.

4. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order dated 05.09.2017 passed in M.H.S Confdl No.93/2017 by the second respondent, detaining the detenu, *Esakkimuthu Thevar*, S/o. *Esakkimuthu Thevar*, who is now detained at the Central Prison, Palayamkottai, is hereby quashed. The above named detenu is ordered to be set at liberty forthwith, unless his



custody is required in connection with any other case.

Sd/-

Assistant Registrar(AD-II)

/True copy/

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Sub Assistant Registrar

To:

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

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