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Madhumathi

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

H.C.P (MD) No.1117 of 2018

: Petitioner

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George, Secretariat,
Chennai - 600 009.

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

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the second respondent in P.D.O.No.20/2018, dated 24.07.2018 and quash the same and direct the respondents to produce the body or person of the detenu, by name, Muthukumar, son of Periyasamy, aged about 39 years, now confining at Trichy Central Prison, Trichy District, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.C.Ramesh

For Respondents

: Mr.V.Neelakandan

Additional Public Prosecutor.

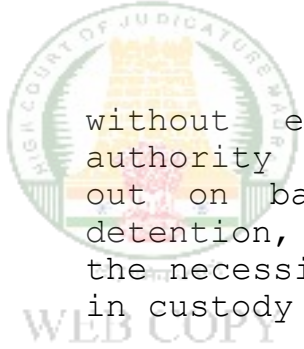
O R D E R

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

The petitioner is the mother of the detenu - Muthukumar, son of Periyasamy, aged about 39 years. The detenu has been detained by the second respondent by his order in P.D.O.No.20/2018, dated 24.07.2018, 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 the order of detention has been assailed on several grounds, the learned counsel for the petitioner primarily relies on the contention that clamping of an order of detention on a person, who was already in custody as a remand prisoner in the ground case,



without expressing subjective satisfaction of the detaining authority regarding the imminent possibility of the detenu coming out on bail in the ground case, would vitiate the order of detention, as the detaining authority had not applied its mind to the necessity of clamping an order of detention while the detenu was in custody as a remand prisoner.

4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. The detaining authority observed that bail application had been filed in the ground case in Crime No.38 of 2018, registered on the file of Kottaiappattinam Police Station and the same is pending in Cr.M.P.No.1806 of 2018 before the Principal District Court, Pudukkottai. However, the Detaining Authority has not expressed his subjective satisfaction of the real possibility of such a bail application being allowed and the detenu being released on bail. In addition, the Detaining Authority also has not referred to any similar case particulars. As such, the contention raised on behalf of the petitioner that the failure on the part of the Detaining Authority to express subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case and also the failure to refer to similar case particulars as the basis for such subjective satisfaction, will militate against the necessity to clamp an order of detention while the detenu was in custody as a remand prisoner. On that score also, the order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention in P.D.O.No.20/2018, dated 24.07.2018, passed by the second respondent, and directs the release of the detenu, by name Muthukumar, son of Periyasamy, aged about 39 years, forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

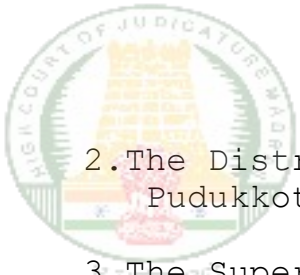
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George, Secretariat,
Chennai - 600 009.



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

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy District.

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

5.The Joint Secretary to Government,
Public (law and order)
Fort.st. George, Chennai.9.

NB

DS SKN SAR-1 03.01.2018 3P/6C

ORDER MADE IN
H.C.P (MD) No.1117 of 2018

03.08.2018