



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

H.C.P (MD) No.1119 of 2018

Pandaram

(amended vide order dated 06.09.2018)

.. 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.

.. Respondents

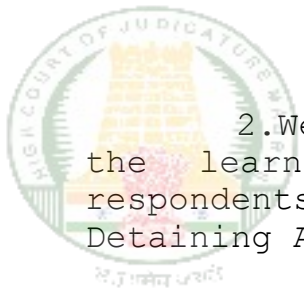
Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S.Confdl No.74/2018 dated 24.07.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Ajith, aged about 23 years S/o.Muthu, now detained at Central Prison Palayamkottai before this court and set him at liberty forthwith.

For Petitioner	: Mr.N.Pragalathan
For Respondents	: Mr.K.Dinesh Babu
	Additional Public Prosecutor.

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

The detenu has been detained by the second respondent by his order in M.H.S.Confdl No.74/2018 dated 24.07.2018, holding him to be a "Goonda", as contemplated under Section 2(f) of the 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 appearing 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 appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel appearing for the petitioner would submit that the detenu has filed bail petition in the ground case in Cr.M.P.No.3228 of 2018 and the same is pending before the Judicial Magistrate No.V, Tirunelveli. However, the detaining authority has relied upon a similar case in CRMP No.2177 of 2018, in which the detenu was granted bail and arrived at a subjective satisfaction that there is real possibility of the detenu coming out on bail in the ground case, as he was granted bail in the said case, which shows the non application of mind on the part of the detaining authority. Hence he prays for quashment of the order of detention.

5. Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the detention order. Admittedly, in the ground case the detenu has already filed bail application and the same is pending. While so, the detaining authority has arrived at a subjective satisfaction that there is imminent possibility of the detenu in coming out on bail in the ground case, since bail was granted to the detenu in similar case, which would clearly show the non application of mind on the part of the detaining authority in clamping the order of detention against the detenu. In such view of the matter, the detention order is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl No.74/2018 dated 24.07.2018, passed by the second respondent is set aside. The detenu, namely, Ajith, aged about 23 years S/o.Muthu, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

/True Copy/



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,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

MJ

TE/SV/SAR-4 : 19/12/2018 : 3P/6C

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29.10.2018