



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1143 of 2018

Sakunthala

... Petitioner

Vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
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.

... Respondents

PRAYER: 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 of the respondent No.2 in M.H.S.Confdl.No.66/2018, dated 16.07.2018 and quash the same and direct the respondents to produce the detenu by name Esakkipandi, son of Sudalai Thevar, aged about 31 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

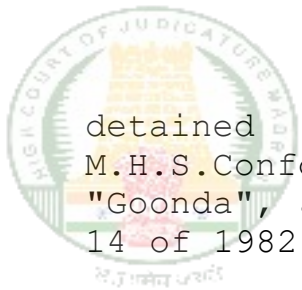
For Petitioner
For Respondents

: Mr.R.Vinoth Bharathi
: Mr.K.Dinesh Babu,
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the wife of the detenu - Esakkipandi,
Son of Sudalai Thevar, aged about 31 years. The detenu has been



detained by the second respondent by his order in M.H.S.Confdl.No.66/2018, dated 16.07.2018, holding him to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2. Despite two adjournments, no counter-affidavit is filed by the learned Additional Public Prosecutor.

3. Though a number of grounds have been raised assailing the order of detention, at the time of making submission, the learned counsel for the petitioner submitted that the Detaining Authority, while arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, has relied upon the bail granted in similar cases in Cr.M.P.No.586 of 2016, dated 12.02.2016 and Cr.M.P.No.1901 of 2018, dated 13.04.2018. Though the Detaining Authority has relied upon the bail granted in the said cases, he has not furnished a copy of the bail applications in Cr.M.P.Nos.586 of 2016 and 1901 of 2018 filed in the said cases and hence, the opportunity of making effective representation against his detention is denied to the detenu. Therefore, non-furnishing of the documents relied on would vitiate the order of detention.

4. In this regard, the learned counsel for the petitioner has also relied upon number of judgments delivered by the Division Benches of this Court, one such case relied upon by the petitioner is **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)."



5. 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.

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6. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in M.H.S.Confdl.No.66/2018, dated 16.07.2018, is quashed. The detenu, namely Esakkipandi, Son of Sudalai Thevar, aged about 31 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
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 & Order) Department,
Fort St. George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SML

TE/SKN/SAR-4 : 15/11/2018 : 3P/6C