



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.1190 of 2018

P.Lakshmi

... 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,
O/o. The District Collector and District Magistrate,
Perambalur District,
Perambalur.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records in detention order passed in Cr.M.P.No.25/2018 dated 06.08.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the Petitioner's son namely Alagiri, S/o. Perumal, male, aged 33 years, who is now detained in Central Prison, Tiruchirappalli before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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 petitioner is the mother of Alagiri, S/o. Perumal, male, aged 33 years, who is the detenu. The detenu has been detained by



the second respondent by his order in Cr.M.P.No.25/2018 dated 06.08.2018, 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 appearing for the respondents. We have also perused the records produced by the Detaining Authority. Despite several opportunities have been given, no counter affidavit has been filed by the respondents. Therefore, the matter is proceeded based on the submissions on either side and the available materials on record.

3. Even though various grounds had been raised by the petitioner, in the present Habeas Corpus petition, while challenging the order of detention, passed by the 2nd respondent, the learned counsel appearing on behalf of the petitioner had submitted that the order of detention passed by the 2nd respondent, on 06.08.2018, is liable to be set aside, on the ground of non-application of mind on the part of the detaining authority.

4. The main contention of the learned counsel appearing on behalf of the petitioner is that the detaining authority, while passing the impugned order of detention, dated 06.08.2018, had not applied his mind properly. In order to substantiate the said claim, the learned counsel appearing on behalf of the petitioner had referred to the averments made in paragraph No.5 of the grounds of detention, which reads as follows:-

"5. I am aware that Thiru. Alagiri is in remand in Perambalur PS Cr.No.425/2018 and has not filed bail petition so far. In a similar case, registered at Perambalur P.S. Cr.No.575/2015 u/s 147, 148, 341, 302 and 506(ii) bail was granted to the accused Selvaraj alias Abdul Rahman, who was remanded on 09.08.15 by the Principal District and Sessions Judge, Perambalur in Cr.M.P.No.593/2015 on 28.09.2015. Hence, I infer that there is real possibility of his (Alagiri) coming out on bail by filing bail application in the above case. If he comes out on bail, he will indulge in future, which will be prejudicial to the maintenance of public order. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of the public order. On the materials placed before me, I am satisfied that Thiru. Alagiri is a "Goonda" and there is necessity to detain him in order to prevent him from indulging in activities, which are prejudicial to the maintenance of public order under the provisions of 2 (f) of the Tamil Nadu Act 14 of 1982."



5. Even though the detaining authority had stated, in paragraph No.5 of the grounds of detention, that in a similar case bail has been granted to one Selvaraj alias Abdul Rahman in Cr.M.P. No.593/2015 on 28.09.2015 by the Principal District and Sessions Court, Perambalur, the detaining authority had failed to furnish a copy of the bail application to the detenu. Thus, the non-supply of the relevant document would vitiate the order of detention, dated 06.08.2018. Further, it is clear that the detenu did not have sufficient opportunity to make an effective representation, against the impugned order of detention, as he had not been furnished with the relevant document. In these circumstances, we are of the view that it would not be appropriate for the detaining authority to state that there is a likelihood of the detenu coming out on bail, in the ground case, since bails are granted, by the courts, in such cases. Hence, we are of the considered view that the detaining authority had passed the impugned order of detention, dated 06.08.2018, without proper application of mind.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.25/2018, dated 06.08.2018, passed by the second respondent is set aside. The detenu, namely, Alagiri, S/o. Perumal, male, aged 33 years, is directed to be released forthwith unless his detention is required in connection with any other case.

sd/

Assistant Registrar(Crl. Side)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 9.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Perambalur District,
Perambalur.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Principal Secretary to Government,
Public (Law & order),
Fort St.George, Chennai-9.



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

sj
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