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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2019

CORAM:

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE B.PUGALENDHI**

H.C.P. (MD) No.184 of 2019

Rajammal : Petitioner

Vs.

1. State of Tamil Nadu, rep. By
The Principal Chief 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
Tuticorin District, Tuticotin.
3. The Superintendent
Central Prison, Palayamkottai
Tirunelveli District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records in detention order passed in H.S.(M)Confdl. No.36/2018 dated 31.12.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner's son namely, Masilamani, son of Muthaiah, male aged 26 years, who is detained in Central Prison, Palayamkottai, Tirunelveli before this Court and set him at liberty.

For Petitioner : Mr.M.Maharaja
For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

ORDER

P. N. PRAKASH, J

The petitioner is the mother of the detenu viz., Masilamani, S/o.Muthaiah, aged about 26 years. The detenu has been detained, as per the order of the second respondent, dated 31.12.2018, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "GOONDA". Challenging the same, the petitioner is before this Court 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 carefully.

3. In Paragraph No.7 of the grounds of detention, the detaining authority stated as follows:

"7. Accused Masilamani was arrested on 14.12.18 and produced before the Court of Judicial Magistrate, Srivaikundam on 14.12.18 and remanded to judicial custody upto 28.12.18 and lodged in District Jail Thoothukudi at Perurani. Further his remand was extended upto 11.01.2019. I am aware that accused Masilamani has tried to file bail petition before the appropriate Court in the ground case registered in Seidunganallur P.S.Cr.No.173/18 u/s 294(b), 302, 506(ii) IPC. I am also aware that in a similar case registered in Kovilpatti East Police Station Cr.No.332/16 u/s 294(b), 302 and 506(ii) IPC bail was granted to accused Kanagaraj by the Madurai Bench of Madras High Court vide Crl.O.P.(MD) No.23893/16 on 23.12.16. I therefore infer that there is a real possibility of his coming out on bail in the above case by filing bail petition in the appropriate courts, since bail are granted by Courts in such cases. If he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order. Further, the recourse of 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 public order. On the materials placed before me, I am satisfied that the said accused Masilamani is a 'Goonda' and there is a compelling necessity to detain him in order to prevent him from indulging in such activities in future which are prejudicial to the maintenance of public order under the provision of Tamil Nadu Act 14 of 1982."

4. From the above, it is clear that the detenu has not filed any bail application and he is only trying to file a bail application, for which, there is no material to substantiate the averment. Hence, there is non application of mind on the part of the detaining authority in arriving at a subjective satisfaction that the detenu is likely to come out on bail by filing bail application. Hence, on this sole ground, the detention order is set aside.

5. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order in H.S.(M)Confdl. No.36/2018 dated 31.12.2018 is quashed. The detenu, namely Masilamani, S/o.Muthiah aged about 26 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(CO)

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Sub Assistant Registrar

To

1. The Principal Chief 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
Tuticorin District,
Tuticotin.
3. The Superintendent
Central Prison,
Palayamkottai
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.MAHARAJA, Advocate (SR-64570[F] dated 30/04/2019)

Order made in
H.C.P. (MD) No.184 of 2019
Dated: 30.04.2019

rr
MK/16.05.2019/3P/6C