



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.30 of 2019

Udhayakumar

: Petitioner

Vs.

1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison
Central Prison, Madurai.

: 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 connected with the detention order of the respondent No.2 in No.62/BCDFGISSSV/2018 dated 28.12.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Udhayakumar, Son of Muthu, aged about 32 years, now detained at Madurai Central Prison, before this Court and set her at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

ORDER

B. PUGALENDHI, J

The petitioner is the detenu viz., Udhayakumar, S/o.Muthu, aged about 32 years. The detenu has been detained, as per the order of the second respondent, dated 28.12.2019, under Section 2(e) of the Tamil Nadu Act 14 of 1982, branding him as "DRUG OFFENDER". Challenging the same, the petititioner 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. 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, by inviting the attention of this Court to the grounds of detention, submitted that before the Government confirming the order of detention, the detaining authority has rejected the same, after the detaining authority has become *functus officio* and hence, it shows the non application of mind on the part of the detaining authority, which vitiates the order of detention.

4. We have considered the submissions made by the learned counsel for the petitioner and the learned Additional Public Prosecutor for the State and perused the grounds of the detention order and connected materials.

4. In this case, the detention order was passed by the detaining authority on 28.12.2018 and even 12 days before i.e. on 10.01.2019, the same was confirmed by the Government, the detaining authority has rejected the representation dated 04.01.2019, on 02.02.2019 instead of sending it to the Government. Had he rejected it and sent it to the Government, we would not have ventured to interfere into the order of the detaining authority. However, in this case, instead of sending it to the Government, the detaining authority has rejected the representation, after he had become *functus officio*. Hence, the detention order is vitiated and the same is quashed.

5. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in No.62/BCDFGISSSV/2018 dated 28.12.2018 is quashed. The detenu, namely Udhayakumar, S/o.Muthu aged about 32 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 (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Secretary to Government
of Tamil Nadu
Home, Prohibition and Excise Department
Fort St. George, Chennai-9.



2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison
Central Prison, Madurai.

4.The Joint Scretary to Government of Tamil Nadu,
Public(Law and Order) Department,
Fort.St.George, Chennai-9.

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

H.C.P. (MD) No.30 of 2019

Dated: 30.04.2019

CS: (31/05/2019) 3P 6C