



WEB COPY

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.34 of 2019

Alagammal : Petitioner

Vs.

1.The Principal Chief 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,
Special Prison for Women
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.61/BCDFGISSSV/2018 dated 28.12.2018 and quash the same and direct the respondents to produce the body or person of the detainee by name Alagammal wife of Boopathi, aged about 43 years, now detained at Special Prison for women, Madurai, 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 detainee viz., Alagammal, W/o.Boopathi, aged about 43 years. The detainee has been detained, as per the order of the second respondent, dated 31.12.2018, under Section 2(e) of the Tamil Nadu Act 14 of 1982, branding him as "DRUG OFFENDER".
In view of the facts and circumstances, 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. 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 detention order, submitted that the detention order was passed on 28.12.2018. He further submitted that the Government confirmed the order of detention on 08.01.2019 vide G.O.No.130. While so, the detinue has sent a representation on 04.01.2019 to the detaining authority, the detaining authority has rejected the said representation on 02.02.2019, 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.

5. In this case, the detention order was passed by the detaining authority on 28.12.2018 and the same was confirmed by the Government in G.O.No.130 dated 08.01.2019. While so, the detinue gave representation to the detaining authority, which was received on 07.01.2019 and the same was rejected on 02.02.2019. Had the detaining authority rejected the same and send it to the Government for consideration, things would have been different. 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, on this sole ground, the detention order is vitiated and the same is quashed.

6. 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 No.61/BCDFGISSSV/2018 dated 28.12.2018 is quashed. The detinue, namely Alagammal, W/o.Boopathi, aged about 43 years, is ordered to be set at liberty forthwith, if she is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS)

RR

To

1. The Principal Chief Secretary to Government of Tamil Nadu
<https://hcservices.ecourts.gov.in/hcservices/>
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,
Special Prison for Women
Madurai.

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.

Order made in
H.C.P. (MD) No. 34 of 2019
Dated: 30.04.2019

ES/15.05.2019/3P/6C