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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2019

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P(MD)No.449 of 2019

M.Muneeswari

...Petitioner

Vs.

1. The Secretary to Government,
Government of Tamil Nadu, Home,
Prohibition and Excise IX,
Secretariat, George Fort,
Chennai 600 009

2. The Commissioner of Police,
Madurai City, Madurai District.

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.

... Respondents

PRAYER: This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, calling for the records on the file of the 2nd respondent in Detention Order No.26/BCDFGISSSV/2019 and set aside the order of detention passed therein dated 21.05.2019, direct the respondents 1 & 2 to produce the detenu by name Ithayaraja, aged 27 years, son of Murugesan before this Court and set him at liberty forthwith.

For Petitioner

: Mr.J.William Christopher

For Respondents

: Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

The present Habeas Corpus Petition is directed against the
<https://hcservices.courts.gov.in/hcservices/> Detention Order passed by the second respondent in Detention Order



No.26/BCDFGISSSV/2019 dated 21.05.2019.

2.The Sponsoring Authority had recommended for the detention of the petitioner under Act 14 of 1982 on one adverse case and one ground case registered against the Petitioner and the petitioner was thereafter arrested in the said case. The Detaining Authority has branded the detenu as a ''GOONDA'' and has passed the Detention order, dated 21.05.2019.

3. The learned counsel for the petitioner attacked the Detention Order, mainly on the ground that, the detenu was already granted bail in the ground case and by the time he executed surety, the Detention Order came to be passed by the second respondent. The learned counsel submitted that the Detention Order is liable to be interfered mainly on the ground that the Detention Order virtually set at naught the order passed by the competent Criminal Court.

4. The learned Additional Public Prosecutor appearing on behalf of the respondents submitted that the Detaining Authority has satisfied himself with regard to the detenu coming out on bail, based on the fact that, bail was already granted to the detenu and he is yet to come out of the bail and therefore, there is no requirement for the Detaining Authority to rely upon any other material and the only material which is relevant in this case is the bail order that has been passed in favour of the detenu.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. This Court had an opportunity to consider the very issue in H.C.P.(MD) No.948 of 2018, dated 05.07.2018 and the relevant portion in the order is extracted hereunder:-

"3.The order of detention reflects a most blatant attempt to scuttle the grant of bail by this Court to the detenu and defeat the order passed by this Court. The detention order dated 27.06.2018 informs that the detenu has been granted bail on the very same date under order in Crl.O.P.(MD) No.9959 of 2018, on 27.06.2018 and thereafter proceeds to state that the detenu has not produced sureties, as orders by this Court.

4. We fail to understand how the Detaining Authority can insist that the detenu to produce the sureties on the very date of the order of bail granted by this Court and how not doing so can be stated as a reason informing likelihood of the detenu being released on bail and therefore, the need for his detention.

5. The Detaining Authority is warned that his approach, besides being unjust, can very well be seen as



contempt of Court. However, for the present, this Court would not make an issue of it, but, the Detaining Authority as also the Sponsoring Authority would, in future, act with due diligence and respect to the orders of this Court."

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7. The competent Criminal Court has already applied its mind in considering the bail petition filed by the detenu in the ground case and has granted bail to the detenu and what remains is only the execution of sureties. If in the interregnum, the Detention Order is passed by the Detaining Authority, the same will tantamount to interference with the bail order passed by the competent Court and this will directly interfere with the independence of judiciary.

8. The net result of the Detention Order is that the bail order passed by the competent criminal court has been set at naught and this cannot be permitted and the Detention Order passed by the second respondent is liable to be set aside on this ground alone.

9. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.26/BCDFGISSSV/2019 dated 21.05.2019 passed by the second respondent is set aside. The detenu, namely, Ithayaraja, son of Murugesan, aged about 27 years, is directed to be released forthwith, unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
Government of Tamil Nadu, Home,
Prohibition and Excise IX,
Secretariat, George Fort,
Chennai 600 009
2. The Commissioner of Police,
Madurai City, Madurai District.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



4.The Joint Secretary to Government,
Public (Law and Order),
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.449 of 2019

Dated:
15.11.2019

KK/SAR/10.12.2019/4P-6C/