



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.1649 of 2018

Shanmugavel

... Petitioner

-vs-

1.The Principal Secretary to Government
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600009.

2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order of the respondent No.2 in Detention order No.96/2018, dated 11.11.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Shanmugavel, son of Muthuchamy, aged about 28 years, now confining at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by B.PUGALENDHI, J.]

The second respondent clamped an order of detention on 11.11.2018, as against Shanmugavel, son of Muthuchamy, as the said Authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3(1) of Tamil Nadu Act 14 of 1982 with a view to prevent him from acting prejudicial to the interest of public health and public order.

2. Challenging the order of detention, the detenu has come forward with the present habeas corpus petition.



3. Heard Mr.R.Alagumani, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents and carefully perused the records.

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there was non-application of mind on the part of the detaining authority. According to the learned counsel, in Paragraph No.5 of the impugned detention order, the detaining authority has stated that the detenu, who is in remand in Dindigul Taluk Police Station Crime No.625 of 2018, filed bail application for the said case, before the learned Judicial Magistrate No.I, Dindigul, in Cr.M.P.No.6615 of 2018 and the same was dismissed on 09.10.2018. Thereafter, he filed bail application for the said case, before the learned Principal District and Sessions Judge, Dindigul, in Cr.M.P.No.2772 of 2018 and the same was pending at the time of passing the impugned detention order. Further, in a similar case registered in Dindigul Town Police Station Crime No.602 of 2014, bail was granted to the accused therein, by name, Prabakaran, by this Court, on 25.11.2014. Hence, the detaining authority has stated that there is a real possibility of the detenu coming out on bail by filing bail application for the above case before the appropriate court. Thus, according to the learned counsel, there is non-application of mind on the part of the detaining authority.

5. As rightly contended by the learned counsel for the petitioner, the bail application filed by the detenu for the ground case was pending at the time of passing the detention order. However, the detaining authority, by relying upon the bail order granted to the similarly placed person, has held that there is a possibility of the detenu coming out on bail, which clearly shows non-application of mind and, therefore, on this ground alone, the subjective satisfaction arrived at by the detaining authority is vitiated.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention No.96/2018, dated 11.11.2018, passed by the second respondent, is set aside. The detenu, namely, Shanmugavel, son of Muthuchamy, aged about 28 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)



To:

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District, Dindigul.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai.
- 4.The Joint Secretary to Government of Tamil Nadu,
Public (Law & Order),
Fort Saint George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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