



WEB COPY

H.C.P.(MD) No.1283 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1283 of 2019

Saravanan @ Murugan

... Petitioner/Detenu

-vs-

1.The Additional Chief Secretary to Government

State of Tamil Nadu

Home, Prohibition and Excise Department

Fort St.George

Chennai-600 009

2.The District Collector and District Magistrate

Office of the District Collector and District Magistrate

Tirunelveli

Tirunelveli District

3.The Superintendent of Prison

Palayamkottai Central Prison

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 calling for the entire records, connected with the detention order of the second respondent in M.H.S.Confdl No.92/2019, dated 07.11.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Saravanan @ Murugan, son of Arumugavel, aged about 20 years, now detained as "Goonda" at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.V.Neelakandan

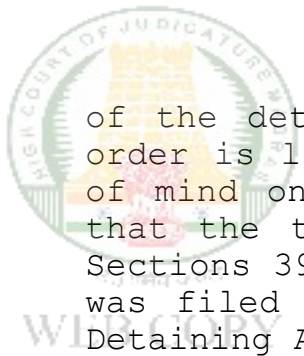
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This habeas corpus petition has been filed by the detenu, namely, Saravanan @ Murugan, son of Arumugavel, aged about 20 years, against the detention order in M.H.S.Confdl No.92/2019, dated 07.11.2019, branding him as "Goonda" as contemplated under Section 2 (f) of the Tamil Nadu Act 14 of 1982.

2. Mr.R.Alagumani, learned counsel for the petitioner, would submit that the arrest of the detenu in the third adverse case and the ground case was not intimated either to the family members of the detenu or his relatives and hence, he was deprived of giving effective representation to the Authorities concerned for revocation



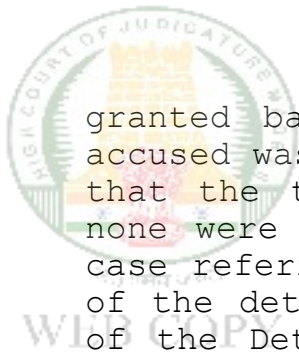
of the detention order. It is also contended that the detention order is liable to be quashed on the ground of lack of application of mind on the part of the Detaining Authority. It is contended that the third adverse case was registered for the offence under Sections 397 and 506(ii) I.P.C., but admittedly, no bail application was filed by the detenu in the third adverse case. However, the Detaining Authority relying upon the bail order, dated 23.09.2019 in Cr.M.P.No.9526 of 2019, granted by the learned Sessions Judge, Tirunelveli, to one Arunsaju, has reached the subjective satisfaction that the detenu is likely to be released on bail in the third adverse case. Further, the learned counsel for the petitioner submitted that the similar case referred by the Detaining Authority is not similar to the case of the detenu herein and hence, on these two grounds, the impugned detention order is liable to be set aside.

3. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor, submitted that the detention order has been passed by the Detaining Authority based on the cogent materials produced by the Sponsoring Authority only to prevent the detenu from indulging in similar activities in future. It is the submission of the learned Additional Public Prosecutor that there is no illegality or irregularity in the detention order warranting interference of this Court. Further, the arrest of the detenu has been properly intimated to his family members and therefore, prayed for dismissal of the habeas corpus petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. In the case on hand, though it is contended by the learned Additional Public Prosecutor that the arrest of the detenu has been properly intimated to the family members of the detenu, a perusal of Page Nos.149 and 195 of the booklet would show that the detenu was arrested in the third adverse case and the ground case on 14.10.2019, but there is nothing on record to show that the arrest of the detenu was intimated to his family members. This Court, following the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**, in several cases, has consistently held that if there is no proper intimation of arrest of the detenu either to his family members or his relatives, his valuable rights would seriously be prejudiced on the sense that they will not have the opportunity to make effective representation to the Authority concerned in time for revocation of the detention order.

6. Further, the Detaining Authority to arrive at the subjective satisfaction has referred the bail order, dated 23.09.2019 in Cr.M.P.No.9526 of 2019, granted by the learned Sessions Judge, Tirunelveli, to one Arunsaju, which is found at Page No.267 of the booklet. In that case, the learned Sessions Judge



granted bail to the accused therein on the ground that the co-accused was granted bail. But, in the case on hand, it is submitted that the third adverse case was filed against three accused, but none were granted bail. Hence, we are convinced that the similar case referred by the Detaining Authority is not similar to the case of the detenu, which shows lack of application of mind on the part of the Detaining Authority. Therefore, on these two grounds the impugned detention order is liable to be set aside.

7. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in M.H.S.Confdl No.92/2019, dated 07.11.2019, is set aside. Consequently, the detenu, namely, Saravanan @ Murugan, son of Arumugavel, aged about 20 years, who is now detained at Palayamkottai Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli, Tirunelveli District.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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