



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGOVAN**

H.C.P. (MD) No.920 of 2020

Sudalaivadivu ... Petitioner/Wife of the Detenue

-VS-

- 1.State of Tamil Nadu
rep.by the Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009
- 2.The Commissioner of Police
Tirunelveli City, Tirunelveli
- 3.The Superintendent of Prison
Central Prison
Palayamkottai, Tirunelveli ... 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 passed in No.9/BCDFGISSSV/2020, dated 07.10.2020, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu i.e., the petitioner's husband by name Shanmugasundaram alias Sundar, aged about 29 years, son of Vellapandi Thevar, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.K.Dinesh Babu
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 wife of the detenu, namely, Shanmugasundaram alias Sundar, son of Vellapandi Thevar, aged 29 years, challenging the detention order No.9/BCDFGIISSSV/2020, dated 07.10.2020, passed by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Though several grounds have been raised challenging the impugned detention order, Mr.N.Pragalathan, learned counsel for the petitioner, would mainly contend that the impugned order of detention is liable to be set aside on the ground of lack of application of mind on the part of the Detaining Authority while arriving at the subjective satisfaction. It is the submission of the learned counsel that the similar case relied on by the Detaining Authority to arrive at the subjective satisfaction is not similar to the case of the detenu.

3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that the detention order has been rightly passed by the second respondent taking note of the activities of the detenu and it has been passed to prevent the detenu from indulging in similar activities in future and there is no irregularity or illegality in the impugned detention order and hence, prayed for dismissal of the habeas corpus petition.

4. Heard both sides and perused the materials available on record.

5. A perusal of the booklet filed by the learned counsel for the petitioner shows that the Detaining Authority while arriving at the subjective satisfaction has relied on the order dated 15.11.2019, passed in Cr.M.P.No.11663 of 2019, by the Principal Sessions Court, Tirunelveli, wherein bail was granted on the ground that the accused therein was in incarceration for more than 11 days and nobody sustained injury. But, in the present case, Page No.377 of the booklet shows that the *de facto* complainant sustained injury. So, we are convinced that the similar case relied on by the Detaining Authority while arriving at the subjective satisfaction is not similar to the case of the detenu, which shows lack of application of mind on the part of the Detaining Authority and on this sole ground, the impugned detention order is liable to be set aside.



6. In fine, the Habeas Corpus Petition is allowed. The detention order No.9/BCDFGISSSV/2020, dated 07.10.2020, passed by the second respondent, is set aside. Consequently, the detenu, namely, Shanmugasundaram alias Sundar, son of Vellapandi Thevar, aged 29 years, who is now detained at Central Prison, Palayamkottai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

krk

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.

To:

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of Police,
Tirunelveli City, Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
4. The Joint Secretary to Government,
Public (Law & Order), Fort Saint George, Chennai
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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SSS (CO)

TR(23.04.2021) 3P 6C

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