



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN**

H.C.P. (MD) No.1185 of 2020

Kalipandi ... Petitioner/Father of detenue

-vs-

1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Inspector of Police,
Pasuvanthanai Police Station,
Thoothukudi District.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the respondents herein to produce the detenue Balamurugan, aged about 22 years, S/o Kalipandi, who has been termed as "Goonda" and who is now detained in 4th respondent's prison before this Court and to call for the entire records relating to the detention order in H.S(M) Confdl.No.25/2020 dated 26.05.2020 passed by the second respondent and to set aside the same and to set the detenue at liberty.

For Petitioner : Mr.M.S.Jeyakarthik

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 father of the detenu, namely, Balamurugan, aged about 22 years, who is detained by the order of the second respondent dated 26.05.2020 in H.S(M) Confdl.No.25/2020 branding him as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

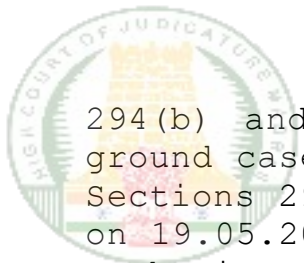
2.Mr.M.S.Jeyakarthik, learned counsel for the petitioner submitted that the impugned detention order is liable to be set aside on the ground of failure to intimate the arrest of the detenu either to his family members or his relatives. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **D.K.Basu vs. State of West Bengal**, reported in **AIR (1997) SC 610**. It is next contended that the similar case relied on by the detaining authority to arrive at subjective satisfaction is not similar to the case of the prosecution.

3.Per contra, the learned Additional Public Prosecutor Mr.K.Dinesh Babu, on instructions, would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. According to the learned Additional Public Prosecutor, there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.In the matter on hand, the detenu was arrested in the ground case in Crime No.101/2020 on the file of the Pasuvanthanai Police Station for the offence under Sections 294(b) and 302 IPC. According to the detaining authority, the arrest of the detenu was intimated to his cousin Chellapandi. Though it is argued that the intimation was not sent to his cousin Chellapandi, but the fact remains that he has signed in the arrest intimation form. Hence, the first ground i.e., failure to intimate the arrest of the detenu either to his family members or his relatives, is rejected.

6.It is further seen that the detenu is involved in Crime No.102 of 2020 on the file of the Pasuvanthanai Police Station and is registered for the offences punishable under Sections



294(b) and 307 IPC and as stated above, he is involved in the ground case in Crime No.101/2020 for the offences punishable under Sections 294(b) and 302 IPC and he was arrested in the ground case on 19.05.2020 and was remanded to judicial custody. The detaining authority to arrive at subjective satisfaction has relied upon the order passed in the case of one Kanagaraj, who was accused in Crime No.332 of 2016 on the file of the Kovilpatti East Police Station for the offences punishable under Sections 294(b), 302 and 506(ii) IPC. In that case, he was secured by the police on 03.07.2016 and he was granted bail by this Court in CrI.O.P(MD) No.23893 of 2016. Therefore, we are impressed with the argument of the learned counsel for the petitioner that the similar case referred by the detaining authority is not similar to the case of the detenu. Hence, on this sole ground, the impugned detention order is liable to be set aside.

7.In fine, the order of detention passed by the second respondent, in H.S(M) Confdl.No.25/2020 dated 26.05.2020 is set aside and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Balamurugan, son of Kalipandi, aged about 22 years, 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 (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

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 Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

3.The Inspector of Police,
Pasuvanthanai Police Station,
Thoothukudi District.

4.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

5.The Joint Secretary to Government,
Public(Law and Order)Department,
Fort.Saint George, Chennai-9.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.S.JEYAKARTHIK, Advocate (SR-2306[F] dated
29/01/2021)

H.C.P. (MD) No.1185 of 2020
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KM (11.02.2021) 4P 8C