



H.C.P.(MD) No.1217 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

H.C.P.(MD) No.1217 of 2024

Prathap

... Petitioner

-VS-

1.The Principal Secretary to Government
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 District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus to call for the entire records, connected with the detention order of the Respondent No.2 in Detention Order No.83/2024 dated 19.08.2024



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and quash the same and direct the respondents to produce the body or person of the detenu by name Prathap, son of Late.Kannan, aged about 32 years, now confining at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : DR.R.Alagumani
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The petitioner is the detenu viz., Prathap, aged about 32 years, S/o.Late.Kannan. The detenu has been detained by the second respondent by his order in Detention Order No.83/2024, dated 19.08.2024 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this habeas corpus petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.



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3. Though several grounds have been raised in the habeas corpus petition, learned counsel for the petitioner mainly focused on the ground that after Detention Order was confirmed by the Government on 30.08.2024, the Detaining Authority becomes *Functus Officio* and in such circumstances he is bound to forward the representation to the Advisory Board for consideration. In this case, the Detaining Authority despite receiving the representation on 28.08.2024 had not forwarded the same to the Government or to the Advisory Board, whereas, he has rejected the representation on 02.09.2024 by proceedings in Tha.Ka.A.No. 82/2024/C2, thereby the Detention Order is vitiated on account of non forwarding of representation, dated 24.08.2024 - received on 28.08.2024. The learned counsel for the petitioner, in support of his contentions, has placed reliance upon the decision of this Court in the case of (i) ***Viji vs. The Commissioner of Police, Greater Chennai***, reported in (2003) M.L.J,(Crl.) 571; (ii) ***Rajeswari V. The Secretary to Government, Prohibition and Excise Department and another*** reported in 2006-1 L.W (Crl.) 369 ; (iii) ***Muruggavalli vs. State rep. by Secretary to Government, Home, Prohibition and Excise Department, Secretariat, Chennai and another*** reported in 2012 (3) CTC 313 and (iv) ***Petchiammal vs.***



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WEB COPY *The Principal Secretary to Government and 2 others in H.C.P(MD)No.5 of 2024, dated 03.07.2024.*

4. Learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that the detention order is dated 19.08.2024 and the detenu had sent a representation on 24.08.2024 to the detaining authority and it was received by the detaining authority on 28.08.2024 and the confirmation order was passed by the Government on 30.08.2024 and the representation had been considered and rejected by the Detaining Authority on 02.09.2024, on that score alone, it cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and therefore prays for dismissal of the habeas corpus petition.

5. On perusal of the records, we find that the detention order is dated 19.08.2024 and the detenu had sent a representation on 24.08.2024 to the detaining authority and it was received by the detaining authority on 28.08.2024 and the confirmation order was passed by the Government on 30.08.2024. After the confirmation by the Government of Detaining Authority becomes 'Functus



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Officio'. In such circumstances, the Detaining Authority has no business other than forwarding the same to the Advisory Board as required under Section 10 of the TN Act of 1982. In this case the Detaining Authority by letter dated 02.09.2024 has rejected the representation and not forwarded the same to the Government or to the Advisory Board.

6. In *Viji's* case (cited supra), the Division Bench of this Court, while considering the issue as to whether the non-placement of the representation of the detenu sent by him against his order of detention before the Advisory Board would vitiate the order of detention, has held that it is imperative on the part of the Government to put any representation made by the detenu challenging the detention before the Advisory Board. Further, it has been held that it is not for the Government to choose as to which representation should be put before the Advisory Board and which representation should not be put before it and it is not the choice of the Government. The direction of the law is loud and the clear that every representation which has been made prior to the meeting of the Advisory Board must be put before the Advisory Board. Therefore, we are of the considered view that the non-placement of the representation sent by the detenu



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before the Advisory Board vitiates the impugned detention order and the same is, therefore, liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.83/2024, dated 19.08.2024, passed by the second respondent is set aside. The detenu, viz., Prathap, son of Late.Kannan, aged about 32 years, is directed to be released forthwith unless his detention is required in connection with any other case.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
am

[A.D.J.C., J.] [R.P., J.]
10.06.2025



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To:

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Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

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