



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR. JUSTICE V.S.RAVI

H.C.P. (MD) No.1094 of 2015

Sudha

.. Petitioner

Vs.

1.The State of Tamil Nadu

rep.by Secretary to Government

Home, Prohibition and Excise Department

Fort. St.George, Chennai - 600 009

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

3.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.

.. Respondents

Prayer : Petition under Article 226 of the Constitution of India, praying to call for the records relating to the detention order passed by the second respondent in detention order No.54/2015 dated 11.07.2015 and to quash the same and direct the respondents to produce and person or the body of the detenu Aandavan, S/o.Kamaraj aged about 37 years before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner : Mr.S.Kanagarajan

For Respondents : Mr.A.Ramar

Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.R.SHIVAKUMAR.,J.)

The petitioner is the wife of the detenu Aandavan. The detenu was detained by the second respondent by his order in Detention Order No.54/2015 dated 11.07.2015, holding him to be a "sexual offender", as contemplated under Section 2(ggg) of the Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.575 of 2015 on the file of the Dindigul Taluk Police Station for alleged offences punishable under Sections 457, 392 of the Indian Penal Code, altered to sections 457, 397 and 376 of the Indian Penal Code.



2.The Detaining Authority viz., the second respondent, clamped the Order of Detention, after expressing subjective satisfaction that the petitioner conformed to the definition of "sexual offender", as his presence at large would be prejudicial to the maintenance of public order and public health. The Detaining Authority has also expressed a subjective satisfaction that there was imminent possibility of his coming out on bail in the ground case.

3.Though the order of detention is sought to be assailed on a number of grounds raised in the affidavit filed in support of the petition, the learned counsel for the petitioner seeks permission of the Court to raise one more ground and we permit the same. Accordingly, the learned counsel for the petitioner mainly relies on the following contentions:-

(i)There is non application of mind on the part of the Detaining Authority. The authority has failed to notice that as Section 397 IPC cannot have an independent existence and it should be read as proviso either to Section 392 or 395 IPC, as the said Section prescribes only a minimum punishment and not maximum punishment to be imposed.

(ii)While expressing subjective satisfaction regarding the imminent possibility of the detenu coming out on bail, the Detaining Authority referred to a bail order dated 25.04.2013 made in CrI.O.P.No.1199 of 2013 in respect of Crime No.591 of 2012, registered on the file of the Dindigul Taluk Police Station for the offences punishable under Sections 376 and 302 of the Indian Penal Code as the bail order passed in the similar case. But the detaining authority failed to notice that the said order came to be passed as a statutory bail order under Section 167(2) of Cr.P.C., whereas, no such contingency had arisen in the ground case, as the detenu was arrested on 12.06.2015 and the order of detention came to be clamped on 12.07.2015.

4.The relevant portion in the grounds of detention found in paragraph - 6 is extraced hereunder:-

"I am aware that the accused Aandavan is in remand in District Jail, Dindigul in connection with Dindigul Taluk Police Station Cr.No.575/2015 u/s.457, 392 @ 457, 397, 376 IPC. The accused Aandavan has not filed bail petition before any Court so far. However, in a similar case i.e. Dindigul Taluk Police Station Cr.No.591/2012 u/s.376, 302 IPC, the Judicial Magistrate No.1, Dindigul granted bail vide Cr.M.P.No.1199/2013 dated 25.04.2013. Hence, I infer there is a real possibility of his (Aandavan) coming out on bail by filing bail application."



5.As rightly contended by the learned counsel for the petitioner, though the ground case was registered for offences under Sections 457 and 392 of IPC, it was altered into one for offences alleged under Sections 457, 397 and 376 IPC. While referring to the penal provision under Section 397 IPC, the substantive penal provision has not been referred to. This discrepancy was not noticed by the detaining authority and hence, as rightly contended by the learned counsel for the petitioner, the same can be termed as non application of mind, vitiating the order of detention.

6.So far as the other ground is concerned, for the purpose of expressing substantive satisfaction regarding the imminent possibility of the detenu coming out on bail, the copy of the bail order in the similar case is found at pages 51 to 53 of the booklet. It is quite obvious that therein the bail was granted by the Judicial Magistrate under Section 167(2) Cr.P.C., since investigation was not completed within 90 days from the date of arrest of the accused therein. Comparison of such a statutory bail with the case of the detenu within 30 days from the date of his arrest is improper and the subjective satisfaction expressed by the detaining authority in this regard shall be termed nonetheless *ipse dixit* vitiating the order of detention. On both grounds, the order of detention is liable to be set aside.

7.In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 11.07.2015, made in Detention Order No.54/2015, by the second respondent / District Collector and District Magistrate, Dindigul and directs the release of the detenu by name Aandavan, S/o.Kamaraj, aged about 37 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(Per.Admn)

/True Copy/

Sub-Assistant Registrar

To

1.The 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,
Dindigul District, Dindigul.



3.The Commissioner of Police, Dindigul

4.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.

5.The Superintendent of Police,
Central Prison, Madurai

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

7.The Director General of Police,
Mylapore, Chennai-4

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

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RL/9C/GSV/AN/11/12/2015

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