



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1198 of 2015

Prabhu

.. Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District
Magistrate, Ramanathapuram.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records pertaining to the impugned detention order passed by the second respondent in his proceedings in No.13/Goonda/2015, dated 10.08.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Prabhu S/o.Nagaraj, aged about 23 years, now detained at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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 detenu. He has been detained by the second respondent by his order in No.13/Goonda/2015, dated 10.08.2015, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.286 of 2015 registered on the file of Paramakudi Town Police Station for offences punishable under Sections 392 r/w 397 of the Indian Penal Code and the following four adverse cases:

(i) Crime No.193 of 2014 registered on the file of Paramakudi Police Station for an offence punishable under Section 392 of the Indian Penal Code;



(ii) Crime No.237 of 2014 registered on the file of Paramakudi Town Police Station for an offence punishable under Section 392 @ 392 r/w 34 of the Indian Penal Code;

(iii) Crime No.75 of 2014 registered on the file of Keelathooval Police Station for an offence punishable under Section 392 of the Indian Penal Code; and

(iv) Crime No.33 of 2015 registered on the file of Nainarkoil Police Station for an offence punishable under Section 392 of the Indian Penal Code.

2.The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3.Though the order of detention is assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that the subjective satisfaction expressed by the detaining authority regarding the imminent possibility of the detenu coming out on bail in the ground case is not supported by cogent materials and it can be termed *ipse dixit*. In support of his contention, the learned counsel for the petitioner relies on the order of this Court made in **H.C.P. (MD) .No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu and others]**, vide order dated 14.12.2015.

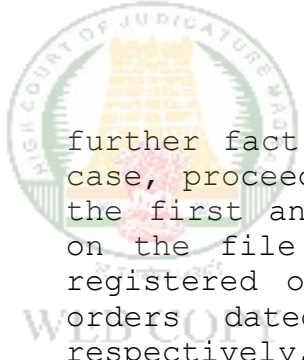
4.We heard the submissions made by the learned Additional Public Prosecutor on the above said submission made on behalf of the petitioner and the submissions made by the learned Additional Public Prosecutor are also taken into consideration.

5.In the grounds of detention in paragraph No.5, the detaining authority made the following observation to express his subjective satisfaction that the detenu is very likely to come out on bail in the ground case:

"5.I am also aware that Thiru.Prabhu (23/2015) S/o.Nagaraj, 3/99 Eswaran Koil Street, Emaneswaram, Paramakudi, Ramanathapuram District is now at District Jail, Ramanathapuram in connection with the ground case in Paramakudi Town P.S.Cr.No.286/2015, U/s.392 r/w 397 IPC. He did not file any bail petition in ground case. The accused filed a bail petition before the Judicial Magistrate Court, Paramakudi in connection with the adverse cases in Paramakudi Town P.S.Cr.No.193/2014 and Nainarkoil P.S.Cr.No.33/2015 vide Cr.M.P.No.1762 & 1761 respectively and bail was granted on 15.07.2015. Hence, I infer that it is very likely of his (Prabhu) coming out on bail in the ground case since bails are granted by the Courts in such cases. If he comes out on bail, he will indulge in such further activities in future, which will be prejudicial to the maintenance of public order."

6.The detaining authority, after noticing the fact that the detenu was in District Jail, Ramanathapuram in connection with the ground case

<https://hcservices.ecourts.gov.in/heservices/v12/>, Crime No.286 of 2015 registered on the file of Paramakudi Town Police Station for offences under Section 392 r/w 397 IPC and also the



further fact that he did not file any bail application in the said ground case, proceeded further to state that since the detenu was granted bail in the first and fourth adverse cases viz., Crime No.193 of 2014 registered on the file of Paramakudi Town Police Station and Crime No.33 of 2015 registered on the file of Nainarkovil Police Station, by virtue of the orders dated 15.07.2015 made in Cr.M.P.Nos.1762 and 1761 of 2015 respectively, it was very likely of the detenu coming out on bail in the ground case. However, copies of the bail orders granted in those cases have not been included in the booklet supplied to the detenu. Copies of the documents pertaining to the intimation memo to the concerned Station House Officer in which the accused was directed to appear in compliance with the condition imposed in the bail order alone came to be supplied to the detenu. With the same, one cannot know under what circumstances bail was granted in those cases. Hence, this Court is able to find that material documents were not placed before the detaining authority and on documents containing crippled particulars, the detaining authority expressed subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case.

7. In addition, when a person sought to be detained under the Act 14 of 1982 is already in custody as a remand prisoner in a particular case and no bail application is pending for his release in that particular case, the only order that can be relied on to support the subjective satisfaction of the imminent possibility of his coming out on bail shall be the release of a co-accused in the very same case. Referring to the bail orders granted in any other case, to support the subjective satisfaction, when no bail application is pending, shall be termed *ipse dixit* not supported by cogent materials. This has been held so by this Court in its order dated 14.12.2015 made in **H.C.P.(MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu and others]**, which was passed following the judgments of a Larger Bench of the Supreme Court in **Rekha Vs. State of Tami Nadu and other** reported in (2011) 5 SCC 244 and a Division Bench of the Hon'ble Supreme Court in **Hudirom Konungjao Singh Vs. State of Manipur and others** reported in (2012) 7 SCC 181. The said ratio squarely applies to the case on hand. Accordingly, we are satisfied that the subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case expressed by the detaining authority is to be termed *ipse dixit* not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.

8. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 10.08.2015, made in No.13/Goonda/2015, by the second respondent, the District Collector and District Magistrate, Ramanathapuram and directs the release of the detenu, by name Prabhu S/o.Nagaraj, aged about 23 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar

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- To
1. The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai - 600 009.
 2. The District Collector and District Magistrate,
Office of the District Collector and District
Magistrate, Ramanathapuram.
 3. The Superintendent of Prison,
Madurai Central Prison, Madurai District
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 - 5 The Joint Secretary, Government of Tamil Nadu,
Public (Law & order) Department, Fort St. George, Chennai 600 009.

TS/05.01.2016/4P-6C/ GSV-AN

ORDER MADE IN
H.C.P (MD) No.1198 of 2015

16.12.2015