



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 07.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR  
and  
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1290 of 2015

Rosy

.. Petitioner

Vs.

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

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

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus calling for the records pertaining to the impugned detention order passed by second respondent made in his proceedings in M.H.S.Confdl.No.80/2015 dated 17.07.2015 in detaining the detenu under Section 2(f) of Tamilnadu Act 14 of 1982 as a GOONDA and quash the same and direct the respondents to produce the detenu namely Mariselvam, S/o.Rajendran, Male, aged about 30 years, who is detained in Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner

: Mr.K.M.Karunakaran

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. The detenu has been detained by the second respondent by his order in M.H.S.Confdl No.80/2015, dated 17.07.2015, 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.353 of 2015 registered on the file of Alangulam Police Station for offences punishable under Sections 294(b), 387 and 506(ii) of the Indian Penal Code and the following two adverse cases:

(i)Crime No.231 of 2015 registered on the file of Alangulam Police Station for an offence punishable under Section 379 of the Indian Penal Code; and

(ii)Crime No.314 of 2015 registered on the file of Alangulam Police Station for an offence punishable under Section 394 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 as well as in the adverse cases, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3. The order of detention has been assailed on several grounds listed in the affidavit filed in support of the Habeas Corpus Petition. However, the learned counsel for the petitioner, giving up other grounds, confines the challenge on the following ground alone:

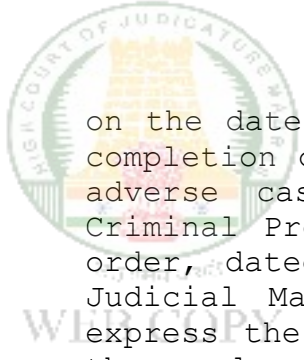
"The detaining authority expressed its subjective satisfaction of the real possibility of the detenu coming out on bail in the second adverse case viz., Crime No.314 of 2015 registered on the file of Alangulam Police Station for an offence under Section 394 of the Indian Penal Code, referring to a bail order granted to one Mr. Mani in a bail petition bearing Cr.M.P.No.5190 of 2010 on the file of the learned Judicial Magistrate No.V, Tirunelveli in respect of a case registered against him for offences under Sections 450 and 394 IPC. The detaining authority failed to note that the said petition was filed for statutory bail under Section 167(2) of Cr.P.C., whereas no right to such statutory bail had accrued to the detenu in the second adverse case. The comparison of the said bail order in which bail was granted under Section 167(2) with the case of the detenu, who was not entitled to the statutory bail under the said provision, was improper and the same makes the order of the detaining authority one passed mechanically without application of mind and the said expression of subjective satisfaction shall be ipse dixit.

4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. In the grounds of detention, while dealing with imminent possibility of the detenu coming out on bail in the second adverse case, the detaining authority made the following observation:

" I am aware that he filed a bail petition before the Judicial Magistrate, Tenkasi, in CRMP No.7766/2015 on 10.07.2015 in Alangulam Police Station Crime Number 314/2015 and the bail petition is yet to be disposed. I am also aware that he is very likely to come out on bail in that case. I am also aware that in a similar case bail has been granted to Mani in CRMP No.5190/2010 dated 30.12.2010 by the Judicial Magistrate No.V, Tirunelveli. I therefore infer that there is very likely of his (Thiru. Mariselvam) coming out on bail in Alangulam Police Station Crime Number 314/2015, since bails are granted by the appropriate courts in such cases."

The copy of the bail order dated 30.12.2010 passed in Cr.M.P.No.5190 of 2010 granting bail to one Mr. Mani in the alleged similar criminal case is found at page No.331 of the booklet. It is obvious from the said order that the petition itself was filed claiming statutory bail under Section 167(2) Cr.P.C. On the other hand, from the grounds of detention, it is obvious that the complaint in the second adverse case viz., Crime No.314 of 2015 on the file of Alangulam Police Station was made on 23.06.2015 and the detention order came to be passed on 17.07.2015. The bail application filed by the detenu in the second adverse case was pending as



on the date of passing of the detention order. The statutory period for completion of the investigation from the date of his arrest in the second adverse case, as contemplated under Section 167(2) of the Code of Criminal Procedure, had not expired. Hence, the comparison of the said order, dated 30.12.2010, made in Cr.M.P.No.5190 of 2010 by the learned Judicial Magistrate No.V, Tirunelveli with the second adverse case to express the subjective satisfaction of the detaining authority regarding the real possibility of the detenu coming out on bail in the second adverse case, can be stated to be ipse dixit not supported by cogent materials. On that score alone, the order of detention is liable to be set aside.

6.In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 17.07.2015, made in M.H.S.Confdl No.80/2015 by the second respondent - the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu, by name Mariselvam S/o.Rajendran, aged about 30 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub AssistantRegistrar

To

- 1.The Secretary to Government,  
Home, Prohibition and Excise Department,  
Secretariat,  
Chennai - 600 009.
- 2.The District Collector and District Magistrate,  
Tirunelveli District,  
Tirunelveli.
- 3.The Superintendent, Central Prison, Palayamkottai
- 4.The Joint Secretary to Government Public (Law & Order),  
Fort Saint, George, Chennai-9.
- 5.The Commissioner of Police, Tirunelveli District, Tirunelveli
- 6.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.M.Karunakaran, Advocate SR.NO.70044

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ORDER MADE IN  
H.C.P (MD) No.1290 of 2015  
07.12.2015