



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.1311 of 2015

Sivagamisundari

.. Petitioner

Vs.

1.The District Collector and District Magistrate,
O/o.the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

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

3.The Superintendent of Prison,
Alangulam Police Station,
Tirunelveli District.

.. Respondents

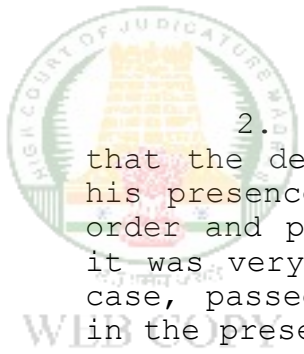
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the respondent No.1 in No. M.H.S.Confdl.No.97/2015 dated 30.08.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Aruljothi aged about 32 years, now detained at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Mohideen Basha
For Respondents : Mr.A.Ramar
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.R.SHIVAKUMAR, J.]

The petitioner is the wife of the detenu. The detenu was detained by the first respondent by his order in M.H.S.Confdl. No.97/2015 dated 30.08.2015, holding him to be a "Sand Offender", as contemplated under Section 2(gg) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.421 of 2015 on the file of Alangulam Police Station registered for offences punishable under Sections 353, 307, 379 of the Indian Penal Code r/w Section 21(4) of Mines and Minerals (Development and Regulation) Act.



2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Sand Offender" and that his presence at large would be prejudicial to the maintenance of public order and public health 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 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 can be even termed ipse dixit, not based by cogent materials. In elaboration of the said contention, the learned counsel for the petitioner submits that when no bail application is pending in respect of the ground case, the detaining authority referred to another case as similar case particulars. The case of a co-accused in the same case alone can be cited as a bail order in a similar case. Since the detaining authority has chosen to refer to some other order passed in some other case, when no bail application was moved on behalf of the detenu, the comparison was improper and the same will make the subjective satisfaction of the detaining authority regarding the real possibility of the detenu coming out on bail ipse dixit not supported by cogent materials.

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

5. In paragraph No.5 of the grounds of detention, the detaining authority referred to the fact that no bail application in the ground case was pending till the passing of the order of detention. However, the detaining authority proceeded further to express his subjective satisfaction that there was real possibility of the detenu coming out on bail in future by filing bail application, as in a similar case bail was granted to one Balasubramanian by order dated 12.01.2015, made in CrI.M.P.No.137 of 2015 by the learned Principal Sessions Judge, Tirunelveli. Even though the detaining authority referred to the date of order and CrI.M.P.No.137 of 2015 as the bail order passed in the similar case, in the grounds of detention the Crime number or C.C. number or S.C. number of the criminal case in which the said bail order came to be passed has not been noted. However, a copy of the said order is found at page 171 of the booklet. It is an entirely different case, in which the accused therein was granted bail for the reasons stated therein. As rightly pointed out by the learned counsel for the petitioner, when no bail application is pending in the case in which the subjective satisfaction of the real possibility of the detenu coming out on bail is to be expressed, then the comparable order shall be an order passed in respect of a co-accused and not an order passed in any other case. The said dictum has been laid down by a Larger Bench of the Supreme Court consisting of three Judges in Rekha Vs. State of Tamil Nadu and others reported in (2011) 5 SCC 244, further explained by another Division Bench of the Hon'ble Supreme Court in Hudirom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181 and the same is also <https://hcservices.ecourts.gov.in/hcservices/> <https://www.indiankanoon.org/doc/1311111/> H.C.P. (MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu and others], vide order dated 14.12.2015. Hence, we do have no hesitation in coming to the conclusion that the comparison made for



expression of subjective satisfaction is not proper and the expression of subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case is only ipse dixit not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.

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6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 31.08.2015, made in M.H.S.Confldl.No.97/2015 dated 30.08.2015, by the first respondent, the District Collector and District Magistrate, Office of the District Collector and District Magistrate, Tirunelveli and directs the release of the detenu by name Aruljothi S/o Sivasubramanian, aged about 32 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar.

To

- 1.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
- 2.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 3.The Superintendent of Prison,
Alangulam Police Station,
Tirunelveli District.(In duplicate to communicate the detenu)
- 4.The Superintendent of Central Prison,
Palayamkottai.
- 5.The Inspector of Police,
Alangulam Police Station, Tirunelveli.
- 6.The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.Mohideen Basha, Advocate, SR.No. 72028

Order made in
H.C.P (MD) No.1311 of 2015
Dated:- 16.12.2015