



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.12.2015

CORAM:

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

H.C.P(MD)No.1323 of 2015

Vaithiyalingam .. Petitioner
Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Magistrate and District Collector,
Pudukkottai District, Pudukkottai. .. 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 pertaining to the impugned detention order passed by the second respondent made in his proceedings in P.D.O.No.21/2015, dated 02.09.2015 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a "Goonda" and quash the same and direct the respondents to produce the detenu namely Baskar @ Baskaran S/o.Vaithiyalingam, Male, aged about 24 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty forthwith.

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 father of the detenu. The detenu has been detained by the second respondent by his order in Detention Order P.D.O.No.21/2015, dated 02.09.2015, 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.244 of 2015 registered on the file of Thirugokarnam Police Station for offence punishable under Section 392 of the Indian Penal Code and the following seven adverse cases:-

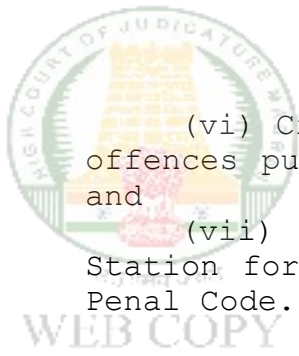
(i). Crime No.118 of 2014 registered on the file of Nagudi Police Station for offence punishable under Section 379 of the Indian Penal Code;

(ii) Crime No.167 of 2014 registered on the file of Nagudi Police Station for offences punishable under Sections 457 and 380 of the Indian Penal Code;

(iii) Crime No.170 of 2014 registered on the file of Nagudi Police Station for offence punishable under Section 379 of the Indian Penal Code;

(iv) Crime No.172 of 2014 registered on the file of Nagudi Police Station for offence punishable under Section 379 of the Indian Penal Code;

(v) Crime No.102 of 2015 registered on the file of Ganesh Nagar Police Station for offences punishable under Sections 457 and 380 of the Indian Penal Code;



- (vi) Crime No.212 of 2015 registered on the file of Thirugokarnam for offences punishable under Sections 457 and 380 of the Indian Penal Code; and
- (vii) Crime No.50 of 2015 registered on the file of Nagudi Police Station for offences punishable under Sections 457 and 380 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 peace and 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.

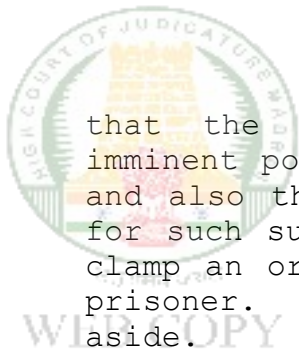
3. Though the order of detention has been assailed on several grounds, the learned counsel for the petitioner primarily relies on the contention that clamping of an order of detention on a person, who was already in custody as a remand prisoner in the ground case, without expressing subjective satisfaction of the detaining authority regarding the imminent possibility of the detenu coming out on bail in the ground case, would vitiate the order of detention, as the detaining authority had not applied its mind to the necessity of clamping an order of detention while the detenu was in custody as a remand prisoner.

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 Paragraph No.5, while dealing with the above said subjective satisfaction, the Detaining Authority has made the following observation:-

"5. I am also aware that Thiru.Baskar @ Baskaran who is in remand in Thirugokarnam Police Station, Crime No.244 of 2015 for offence under Section 392 of Indian Penal Code, has not filed bail petition. Sponsoring Authority stated that in this case, the relatives of the accused are taking steps to release the accused on bail by filing bail petition. Further, resource to the normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public peace and public order. On the materials placed before me, I am fully satisfied that the said Baskar @ Baskaran is a "Goonda" and there is a compelling necessity to detain him under the Prevention of Tamil Nadu Act 14 of 1982."

6. The detaining authority observed that no bail application had been filed in the ground case in Crime No.244 of 2015, registered on the file of Thirugokarnam Police Station, but the relatives of the detenu were taking steps to get him released on bail by filing bail application. However, the Detaining Authority has not expressed its subjective satisfaction of the real possibility of such a bail application being allowed and the detenu being released on bail. In addition, the Detaining Authority also has not referred to any similar case particulars. As such, the contention raised on behalf of the petitioner



that the failure to express subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case and also the failure to refer to similar case particulars as the basis for such subjective satisfaction, will militate against the necessity to clamp an order of detention while the detenu was in custody as a remand prisoner. On that score also, the order of detention is liable to be set aside.

7. In addition, the grounds also show non-application of mind and mechanical clamping of the order of detention, as the Detaining Authority had not chosen to note the clerical mistake found in the very same paragraph of the grounds of detention. Instead of typing "recourse to the normal criminal law will not have the desired effect", it has been typed as "the resource to the normal criminal law will not have the desired effect". The entire meaning gets changed. The said mistake was also not noticed by the Detaining Authority and the mechanical signing of the order of detention by the Detaining Authority. For the reasons stated above, this Court comes to the conclusion that 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 02.09.2015, made in P.D.O.No.21/2015, passed by the second respondent, the District Magistrate and District Collector, Pudukkottai District, Pudukkottai, and directs the release of the detenu, by name Baskar @ Baskaran, aged about 24 years, S/o.Vaithiyalingam, forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To:

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

+1cc to Mr.K.M.Karunakaran, Advocate SR.No.71385

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ORDER MADE IN
H.C.P (MD) No.1323 of 2015
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