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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.1343 of 2015

Murugammal

: Petitioner

Vs.

- 1.The State of Tamil Nadu
Represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector/District Magistrate,
Thoothukudi District,
Thoothukudi.

: 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, relating to the detention order of the respondent No.2 in No.H.S.(M)Confdl.No.28/2015 dated 03.04.2015 and quash the same and direct the respondents to produce the body or person of the detenu Thiru.Chinnadurai S/o Karupphasamy Thevar aged 37 years, who is now detained at Palaymkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner

: Mr.P.T.Ramesh Raja

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 second respondent by his order in H.S.(M).Confdl.No.28/2015 dated 03.04.2015, 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.71 of 2015 on the file of Murappanadu Police Station registered for offences punishable under Sections 294(b), 387, 506(ii) of the Indian Penal Code and the following three adverse cases:-

- (i) Crime No.124 of 2014 registered on the file of Murappanadu Police Station for offences punishable under Sections 120(b), 147, 148, 448, 294(b), 323, 324, 325, 307, 506(ii) IPC and Section 3 of TNPPDL Act r/w 3 (2) (v a) of SC/ST Amendment Ordinance 2004 ;



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(ii) Crime No.125 of 2014 registered on the file of Murappanadu Police Station for offences punishable under Sections 147, 148, 448, 294(b), 506(ii) IPC and Section 3 of TNPPDL Act r/w Section 3(1)(r,s)(2)(v,a) of SC/ST (POA) Amendment Ordinance 2014; and

(iii) Crime No.70 of 2015 registered on the file of Murappanadu Police Station for offences punishable under Sections 294(b), 323, 506(ii) IPC r/w Section 3(1)(x) of SC/ST Act.

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 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 shows non-application of mind on the part of the Detaining Authority and it can be even termed as *ipse dixit*. The bail order granted in another case in respect of another person came to be taken note of in support of the subjective satisfaction of the Detaining Authority when no bail application was pending in the ground case. Such a comparison is against the dictum of the Supreme Court 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 followed by this Court 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. 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. The question of propriety, referring to bail orders in another case when no bail petition is pending on the date of passing of the order of the detention, was considered by a Larger Bench of the Hon'ble Supreme Court consisting of three Hon'ble Judges in **Rekha Vs. State of Tamil Nadu**, reported in 2011 (5) SCC 244 which was further clarified by another Bench of the Hon'ble Supreme Court consisting of two Hon'ble Judges in **Hudirom Konungjao Singh Vs. State of Manipur and others** reported in (2012) 7 SCC 181. The same was also followed by this Bench in **H.C.P.(MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu and others]**, vide order dated 14.12.2015.

<https://hcservices.ecourts.gov.in/hcservices/> 6. A dictum has been laid down therein that in case bail application is not pending, reference to the bail order in any other case to support the subjective satisfaction will not be proper and



exception to the same shall be a reference to an order of bail granted to a co-accused in the very same case. Only in case, a bail application is pending then the Detaining Authority may refer to a bail order granted in favour of an accused in another case provided such other case is also comparable.

7. Since in this case no bail application in respect of the ground case was pending on the date of passing of the order of detention, the reliance on the order of bail passed in Crime No.70 of 2015 as the similar case particulars to support subjective satisfaction of the Detaining Authority in respect of the real possibility of the detenu coming out on bail in the ground case is one not supported by cogent materials and the same shall be termed *ipse dixit*. On that score only, 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 03.04.2015, made in H.S.(M).Confldl.No.28/2015 by the second respondent, the District Collector and District Magistrate, Office of the District Collector and District Magistrate, Thoothukudi District, Thoothukudi and directs the release of the detenu by name Chinnadurai S/o.Karuppasamy Thevar, aged about 37 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 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 Collector/District Magistrate, Thoothukudi District, Thoothukudi.
- 3.The Superintendent, Central Prison, Palayamkottai.
- 4.The Joint Secretary to Government, Public (Law and Order), Fort St.George, Chennai -9.
- 5.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.P.T.Ramesh Raja, Advocate SR.No.72087

Akm/31.12.2015/3p-7c/GSV/AN/SAR-II

Order made in
H.C.P (MD) No.1343 of 2015
Dated:- 16.12.2015