



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2015

CORAM:

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

H.C.P (MD) No.1415 of 2015

M.Prem Kala

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The District Collector/District Magistrate,
Collectorate, Tirunelveli District, Tirunelveli.

3.The Superintendent of Central Prison,
Palayamkottai Central Prison,
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 second respondent in M.H.S.Confdl No.78 of 2015, dated 17.07.2015 and quash the detention order and produce the person or body of the petitioner's husband namely A.Murugesan, [35/15], now confined at Central Prison, Palayamkottai, Tirunelveli District, before this Court and set him at liberty forthwith.

For petitioner

: Mr.T.Lajapathi Roy

For Respondents

: Mr.A.Ramar

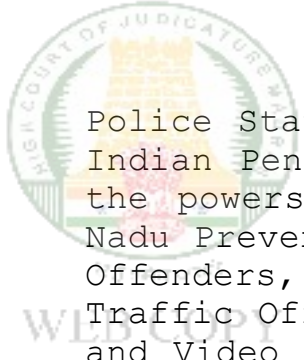
Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu, namely A.Murugesan, aged about 35 years and she has challenged the order of detention passed by the second respondent in M.H.S.Confdl No.78 of 2015, dated 17.07.2015.

2. The detenu - A.Murugesan came to adverse notice in one adverse case in Crime No.246 of 2014, registered on the file of Veeravanallur Police Station, for offences punishable under Sections 147, 148, 449, 302 and 506(ii) of the Indian Penal Code, r/w Section 149 of the Indian Penal Code, besides the ground case in Crime No.133 of 2015, registered on the file of Veeravanallur



Police Station under Sections 294(b), 307, 324 and 506(ii) of the Indian Penal Code, to hold the detenu as "Goonda" in exercise of the powers conferred by sub-section 1 of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Cyber-Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982] read with the orders issued by the Government in G.O.[D].No.76, Home Prohibition and Excise [xvi] Department, dated 18.04.2015.

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 as well as the adverse case was nothing but the *ipse dixit*, as the bail order, taken into consideration, as the one passed in a similar case, cannot be compared with the case of the detenu. The learned counsel for the petitioner submits that in the bail order, the offences alleged were under Sections 294(b), 307 and 506(ii) of the Indian Penal Code, whereas the detenu was facing charges for offences punishable under Sections 294(b), 307, 324 and 506(ii) of the Indian Penal Code in the ground case and a capital offence punishable under Section 302 of the Indian Penal Code in the adverse case. It is also the submission of the learned counsel for the petitioner that even the ground case cannot be compared with the case in which the bail order relied on by the Detaining Authority, since no injury was caused on the victim in the said case, whereas in the ground case, an injury was caused on the victim with an aruval.

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 Detaining Authority, in the grounds of detention, while expressing subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case and the adverse case made the following observations:-

"I am also aware that there is real possibility of his coming out on bail in future by filing bail application for the above cases since in simkilar cases bails are granted by the appropriate Courts. I am also aware that in a similar case bail has been granted to Murugan alias Suruttaimurugan in CRMP.No.5673 of 2013, dated 18.11.2013, by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of his [Thiru Murugan alias Suruttaimurugan] coming out on bail in Veeravanallur Police Station Crime No.133/2015, since bails are granted by the appropriate Courts in such cases. If



he comes out on bail, he will indulge in further activities in future, which will be prejudicial to the maintenance of the public order".

6. The Detaining Authority referred to an order dated 18.11.2013, passed by the learned Principal Sessions Judge, Tirunelveli in CrI.MP.No.5673 of 2013, as the similar case, in which bail was granted to one Murugan @ Suruttai Murugan in Crime No.505 of 2013 on the file of Alangulam Police Station.

7. As rightly contended by the learned counsel for the petitioner, though the accused in Crime No.505 of 2013 on the file of Alangulam Police Station was facing charges for offences punishable under Sections 294(b), 307 and 506(ii) of the Indian Penal Code and the detenu is facing charge under the very same penal provisions in the ground case, the order relied on by the Detaining Authority, a copy of which is available in Page No.287 of the booklet, shows that no injury had been caused by the accused in the similar case. However, in the ground case, it is clear that an averment to the effect that the detenu caused an injury with an aruval has also been made. Hence, as rightly contended by the learned counsel for the petitioner, the comparison is not proper and it may even show non-application of mind on the part of the Detaining Authority. The non-application of mind is more clear when the comparison was sought to be made with the adverse case, in which the detenu is facing a charge for an offence under Section 302 of the Indian Penal Code. Hence, the plea of non-application of mind on the part of the Detaining Authority, as canvassed by the learned counsel for the petitioner, is liable to be sustained. On that score 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 17.07.2015, made in M.H.S.Confdl No.78 of 2015, by the second respondent, the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu, by name A.Murugesan, S/o.Alagumuthu Alias Vellapandi, aged about 35 years, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

NB

To:

<https://hcservices.hc.madras.gov.in/cases/>
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.



2.The District Collector/District Magistrate,
Collectorate, Tirunelveli District, Tirunelveli.

3.The Superintendent of Central Prison,
Palayamkottai Central Prison,
Tirunelveli District.

4. The Principal Secretary to Government
Public (Law and order) Fort st. Geroge, Chennai-600 009

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.T.Lajapathiroy Advocate Sr.No.68686

GJM/PM/MP/9.12.2015-4P-8C

ORDER MADE IN
H.C.P (MD) No.1415 of 2015
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