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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1475 of 2015

R.Archunan

.. Petitioner

Vs.

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

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

3.The Superintendent of Central Prison,
Madurai Central Prison,
Madurai 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 Detention Order No.M.H.S.Confdl.No.103/2015, dated 11.09.2015 and quash the same and direct the respondents to produce the person or body of the petitioner's son named Mariappan [25/15] now confined at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For petitioner : Mr.R.Rajeshkumar

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 M.H.S.Confdl.No.103 of 2015, dated 11.09.2015, 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.90 of 2015 registered on the file of Mukkudal Police Station for offence punishable under Sections 294(b), 387 and 506(ii) of the Indian Penal Code and the following three adverse cases:-

(i). Crime No.142 of 2014 registered on the file of Suthamalli Police Station for offences punishable under Sections 452, 294(b) and 506(ii) of the Indian Penal Code;

(ii) Crime No.159 of 2015 registered on the file of Suthamalli Police Station for an offence punishable under Section 302 of the Indian Penal Code, which was altered into one under Section 302 IPC r/w Section 3(ii)(v) of the Scheduled Caste and Scheduled Tribe [Prevention of Atrocities] Act 1989; and

(i). Crime No.162 of 2015 registered on the file of Suthamalli Police Station for offences punishable under Sections 294(b), 341, 387 and 506(ii) of the Indian Penal Code; and

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 second and third adverse cases and 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 mainly relies on the contention that the subjective satisfaction of the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case and the second and third adverse cases is not based on cogent materials and the same may be termed as *ipse dixit*.

4. In elaboration of the said contention, the learned counsel for the petitioner submits that the subjective satisfaction of Detaining Authority regarding the real possibility of the detenu coming out on bail in a case, wherein no bail application is pending, cannot be based on any other case in respect of other persons; that the very fact that no bail application is pending will negate the imminent possibility of the detenu coming out on bail subject to an exception that a co-accused in the very same case placed under similar circumstances has been release on bail and that since the Detaining Authority referred to a bail order in another case, the subjective satisfaction expressed by him shall be *ipse dixit* not supported by cogent materials.

5. In support of his contention, the learned counsel for the petitioner relies on the Judgment of 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, followed by and clarified in Huidrom Konungjao Singh Vs. State of Manipur and <https://hccourts.org/cases/> in (2012) 7 SCC 181, which has also been followed by a Division Bench of the Madras High Court in H.C.P.No.1154 of 2015, dated 11.08.2015 [Chandrakala Vs. The Secretary to



Government of Tamil Nadu, Home Prohibition and Excise Department and others].

6. 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.

7. In paragraph No.6 of the grounds of detention, the Detaining Authority, expressing his subjective satisfaction regarding the possibility of the detenu coming out on bail, made the following observation:

"6.I am aware that the bail was granted to Thiru. Mariappan before the Judicial Magistrate, Cheranmahadevilit CRMP No: 2808/2014 on 11.07.2014 in Suthamalli Police Station Crime Number 141/2014. I am aware that he has not filed any bails application so far in Suthamalli Police Station Crime Number 159/2015. 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 similar cases bails are granted by the appropriate courts. I am also aware that in similar case bail has been granted to Mothiraj alias Babu in CAMP.No.203/2015., dated: 07.02.2015 by II Additional District and Sessions Court, Tirutielveli. I therefore infer that there is real possibility of his Mariappan) coining out on bail in Suthamalli Police Station Crime Number 159/2015; since bails are granted by the appropriate courts in such cases. I am aware that he has not filed any bail application so far in Suthamalli Police Station Crime Number 162/2015. I am also aware that there is real possibility of his corning out on bail in future by filing bail application for the above cases since in similar cases bails are granted by the appropriate courts. I am also aware that in similar case bail has been granted to Ramar alias Karadi Ramar. in CRMP No. 495/2014, dated: 17.07.2014 by Judicial Magistrate No. V, Tirunelveli. I therefore infer that there is real possibility of his (Thiru. Mariappan) coming out on bail in Suthamalli Police Station Crime Number 162/2015; since bails are granted by the appropriate courts in such cases. I am aware that Thiru. Mariappan is in remand in Mukkudal Police Station Crime Number 90/2015 and in this ease he has nut filed any bail application so far. I at also aware that there is real possibility of his coining out on bail in future by filing bail application for the above cases since in similar cases bails are granted by the appropriate courts. I am also aware that in a similar case bail has been granted to Ramar alias Karadi Kumar in CRMP No: 3495/2014 dated 17.07.2014 by



the Judicial Magistrate No.V, Tirunelveli. I therefore infer that there is real possibility of his (Thiru. Mariappan) earning but on bail in Mukkudal Pace Station Crime Number 90/2015; since bails are granted by the appropriate courts in such Cases".

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8. The Detaining Authority expressed the subjective satisfaction that there was real possibility of the detenu coming out on bail by filing a bail application, since in a similar case, not being a case of a co-accused in the very same case, another person was granted bail. In respect of the ground case, namely, Crime No.90 of 2015 registered on the file of Mukkudal Police Station for offences punishable under Sections 294(b), 387 and 506 (ii) of the Indian Penal Code, the Detaining Authority made a reference to the non-filing of a bail application. However, the Detaining Authority chose to express the subjective satisfaction of the real possibility of the detenu coming out on bail in the ground case by making a reference to a bail order granted to a third person in respect of another case. Such a comparison with bail orders passed in another case, when no bail application is pending, to express subjective satisfaction of the real possibility of the detenu coming out on bail, is against the dictum laid down by a Larger Bench of the Supreme Court in Rekha Vs. State of Tamil Nadu, reported in (2011) 5 SCC 244, followed by a Division Bench of the Hon'ble Supreme Court in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181 and a Division Bench of the Madras High Court in H.C.P.No.1154 of 2015, dated 11.08.2015 [Chandrakala Vs. The Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others]. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention vitiated on the said ground alone.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 11.09.2015, made in M.H.S.Confdl.No.103/2015, passed by the second respondent, the District Collector and District Magistrate, Tirunelveli District, and directs the release of the detenu, by name Mariappan, aged about 25 years, S/o.Archunan forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar



To:

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

+One cc to M/s.R.RajeshKumar, Advocate, SR.No.76022

NB

RL/7C/SK/SKN/SARII/8/1/2016

ORDER MADE IN
H.C.P (MD) No.1475 of 2015

21.12.2015