



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2015

CORAM:

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

H.C.P (MD) No.1554 of 2015

K.Kalyanasundaram : Petitioner

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 9.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Sivagangai District, Sivagangai.
- 3.The Superintendent of Police,
Coimbatore Central Prison,
Coimbatore District. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the second respondent in Cr.M.P.No.15/Goonda/2015, dated 29.04.2015 and quash the same and direct the respondents to produce the detenu namely K.Kalyanasundaram, S/o.Kannusamy, aged about 29 years, detained in Coimbatore Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani
For Respondents : Mr.A.Ramar
Additional Public Prosecutor.

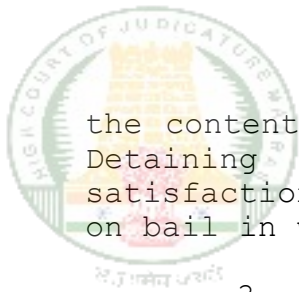
O R D E R

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

The petitioner/detenu - K.Kalyanasundaram, S/o.Kannusamy, aged about 29 years, has been detained, as per the order of the second respondent, dated 29.04.2015, under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982), read with the order issued by the Government in G.O.(D).No.92, Home Prohibition and Excise (XVI) Department, dated 18.04.2015, branding him as "Goonda". Challenging the same, he has come up with this Habeas Corpus Petition.

<https://hcservices.ecourts.gov.in/hcservices/>

2. Though the order of detention is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on



the contention that there was non-application of mind on the part of the Detaining Authority, insofar as the expression of the subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in which he was arrested and remanded.

3. We also heard the submissions made by the learned Additional Public Prosecutor on the above said contentions raised on behalf of the petitioner.

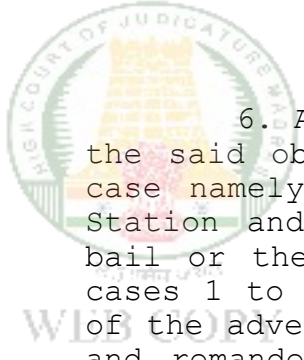
4. The Detaining Authority, while passing the order of detention, took note of the following six adverse cases:-

Seri al No.	Crime Number	on the file of	Offences under Sections
1	117 of 2013	Kalaiyarkovil Police Station	353 and 307 IPC
2	333 of 2013	Kalaiyarkovil Police Station	454 and 380 IPC
3	116 of 2014	Kalaiyarkovil Police Station	457 and 380 IPC
4	151 of 2014	Kalaiyarkovil Police Station	454 and 380 IPC
5	198 of 2014	Kalaiyarkovil Police Station	397 IPC
6	199 of 2014	Kalaiyarkovil Police Station	397 IPC

and also the ground case in Crime No.98 of 2015, registered on the file of Kalayarkovil Police Station, for an offence under Section 397 of the Indian Penal Code.

5. While referring to the subjective satisfaction of the necessity to clamp the order of detention, the Detaining Authority has made the following observations:-

"I am aware that the accused Kalyanasundaram is lodged at Central Prison, Madurai, in connection with ground case in Kalayarkovil P.S.Cr.No.98 of 2015, u/s397 IPC, further the accused was taken to police custody by the order of Judicial Magistrate No.II, Court, Pollachi, on 20.04.2014 from Central Prison, Madurai in connection with a case in Pollachi Taluk P.S.Cr.No.107 of 2014, u/s 452, 392 r/w 397 IPC and after completion of enquiry, the accused lodged in Central Prison, Coimbatore, on 21.04.2014. The accused did not file any bail petition in the Court. In a similar case registered at Sivagangai Town Police Station, Cr.No.471 of 2014, u/s294(b), 341, 397 IPC, bail was granted on 08.10.2014, vide Cr.MP.No.2946 of 2014, dated 16.09.2014 to one Vanniselvam, S/o.Nagarajan, Sivagangai, by the Sessions Court, Sivagangai. Hence, I infer that it is very likely of his [Kalyanasundaram], coming out on bail in this above case, since bails are granted by the Court in such cases. If he comes out on bail, he will indulge in such activities in future, which will be prejudicial to the maintenance of public order".



6. As rightly contended by the learned counsel for the petitioner, the said observation simply refers to the ground case and yet another case namely Crime No.107 of 2014 on the file of Pollachi Taluk Police Station and it does not refer to his arrest and detention, release on bail or the imminent possibility of his release on bail in the adverse cases 1 to 6. If at all the detenu was not shown to be arrested in some of the adverse cases, then, the possibility of the detenu being arrested and remanded in the said case would militate against the necessity to clamp the order of detention. In addition, the Detaining Authority has failed to advert to the questions i).whether the detenu was remanded in the adverse cases? (ii).whether he was directed to be released in respect of any of the adverse cases? and iii).whether there was imminent possibility of the detenu coming out on bail in those adverse cases, in which he was on remand?. As rightly contended by the learned counsel for the petitioner, the same will make the expression of the subjective satisfaction ipse dixit vitiating the order of detention. On that ground alone, the order of detention is liable to be set aside.

7. In the result, this Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 29.04.2015, made in Cr.M.P.No.15/Goonda/2015, passed by the second respondent and directs the release of the detenu, by name K.Kalyanasundaram, S/o.Kannusamy, aged about 29 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, Home, Prohibition and Excise Department, Secretariat, Chennai 9.
- 2.The District Collector and District Magistrate, Office of the District Collector and District Magistrate, Sivagangai District, Sivagangai.
- 3.The Superintendent of Police, Coimbatore Central Prison, Coimbatore District (In duplicate to communicate the detenu)
- 4.The Joint Secretary to Government Public (Law and Order)Department, Fort St.George, Chennai.
- 5.The Additional Public Prosecutor, Madurai Bench of Madras High court, Madurai.
6. The Superintendent, Central Prison, Madurai.
7. The Commissioner of Police, Madurai City, Madurai.

+1CC to Mr.R.Alagumani, Advocate, SR.No. 69225

ORDER MADE IN
H.C.P (MD) No.1554 of 2015
Dated: 02.12.2015

AM/14.12.2015/NGM.SS/SAR-I/3P/10C