



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **22.12.2015**

CORAM:

THE HONOURABLE MR.JUSTICE **P.R.SHIVAKUMAR**
and

THE HONOURABLE MR.JUSTICE **V.S.RAVI**

H.C.P(MD)No.1640 of 2015

Kalavathy .. Petitioner

Vs.

1.State of Tamil Nadu rep by
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Trichirappalli City, Trichirappalli.

3.The Superintendent of Central Prison,
Central Prison, Trichirappalli. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the entire records in detention order passed in C.No.40/Detention/C.P.O./T.C/2015, dated 09.11.2015, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Rajesh Kannan, S/o.Murugan, Male, aged about 24 years, who is detained in Central Prison, Trichirappalli, before this Court and set him at liberty forthwith.

For petitioner : Mr.K.A.S.Prabhu

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 mother of the detenu. The detenu has been detained by the second respondent by his order in C.No.40/Detention/C.P.O./T.C/2015, dated 09.11.2015, 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.637 of 2015 registered on the file of K.K.Nagar Police Station for offences punishable under Sections 341, 294(b), 323, 506(ii), 307,

392 r/w 397 of the Indian Penal Code and the following three adverse cases:-

(i). Crime No.189 of 2015 registered on the file of Tiruchy City K.K.Nagar Police Station for offences punishable under Sections 341, 294(b) and 506(ii) of the Indian Penal Code;

(ii). Crime No.596 of 2015 registered on the file of Tiruchy City K.K.Nagar Police Station for offences punishable under Sections 294(b), 324 and 506(ii) of the Indian Penal Code; and

(iii). Crime No.870 of 2015 registered on the file of Tiruchy City Cantonment Police Station for offences punishable under Sections 294(b), 323, 324 and 307 of the Indian Penal Code;

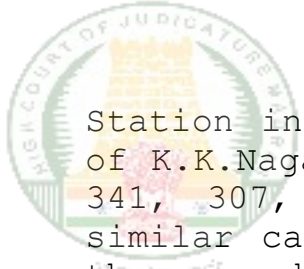
2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and also expressing subjective satisfaction that it was very likely that the detenu would come 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 a number of grounds, the learned counsel for the petitioner mainly relies on the following contention:-

"The detenu was on remand in the ground case and the third adverse case. While expressing subjective satisfaction regarding the real possibility of the detenu coming out on bail in the said cases, the Detaining Authority referred to a bail order dated 13.08.2015 made in Cr.M.P.No.2049 of 2015 by the learned Principal Sessions Judge, Trichirappalli in favour of one Nelson in respect of Crime No.442 of 2015. The said case cannot be compared with the case against the detenu in the ground case. Hence, on the ground of inappropriate comparison of the cases to express the subjective satisfaction, the order of detention is to be set aside, applying the principle laid down by the Hon'ble Supreme Court in **Huidrom Konungjao Singh Vs. State of Manipur and others** reported in (2012) 7 SCC 181.

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. So far as the third adverse case is concerned, no argument has been advanced to the effect that the similar case referred to in the grounds of detention is not comparable. On the other hand, it is the contention of the learned counsel for the petitioner that the ground case is not comparable with the similar case referred to in the grounds of detention. The Detaining Authority referred to a bail order granted in K.K.Nagar Police



Station in Crime No.442 of 2015 which was registered on the file of K.K.Nagar Police Station for offences punishable under Sections 341, 307, 506(ii) and 120-B of the Indian Penal Code as the similar case in which the accused therein was granted bail. But, the ground case in Crime No.637 of 2015 came to be registered on the file of K.K.Nagar Police Station for offences punishable under Sections 341, 294(b), 323, 506(ii), 307 and 392 r/w 397 of the Indian Penal Code. In fact that the ground case was registered for a more graver offence also, namely, an offence punishable under Section 392 r/w 397 of the Indian Penal Code wherein a minimum imprisonment of seven years has been prescribed. The comparison of the said case with Crime No.442 of 2015 registered on the file of K.K.Nagar Police Station to express the subjective satisfaction of the detenu coming out on bail in the ground case is not proper. The comparison is not in tune with the dictum laid down by the Hon'ble Supreme Court in **Huidrom's** case, cited supra. Hence, on that ground alone, the subjective satisfaction of the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case is vitiated and on that ground alone, the order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 09.11.2015, made in C.No.40/Detention/C.P.O./T.C/2015, passed by the second respondent, the Commissioner of Police, Trichirappalli City, and directs the release of the detenu, by name Rajesh Kannan, aged about 24 years, S/o.Murugan 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
Madurai Bench of Madras High Court,
Madurai.

NB

To:

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
- 2.The District Magistrate and District Collector,Trichirappalli.
- 3.The Joint Secretary to Government
Public (Law & Order) Department,
Fort.St.George, Chennai-9



4.The Commissioner of Police,
Office of the Commissioner of Police,
Trichirappalli City, Trichirappalli.

5.The Superintendent of Central Prison,
Central Prison, Trichirappalli.

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

+1 cc to MR.K.A.S.Prabhu,Advocate SR NO.76268

ORDER MADE IN
H.C.P (MD) No.1640 of 2015
22.12.2015

rg.SK-SKN 08.01.2016 4P/8C