



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.08.2015**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

and

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

H.C.P(MD)No.285 of 2015

G.Parameswari

.. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George/Secretariat,
Chennai - 600 009.

2.The District Collector cum
District Magistrate,
Thoothukudi District

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

.. Respondents

Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus to call for the records of the detention order of second respondent vide H.S.(M) Confdl. No.22/2014 dated 03.10.2014, set aside the same and set the detenu by name Ganesan @ Kaivandi Ganesan, Son of Sankaran aed 49 years at liberty, now detained in Central Prison, Palayamkottai, Tirunelveli District.

For Petitioner : Mr.C.T.Perumal

For Respondents : Mr.T.Mohan,
Addl.Public Prosecutor

ORDER

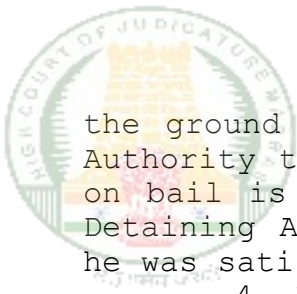
(Order of the Court was made by **S.NAGAMUTHU, J.**)

The petitioner is the wife of one Mr.Ganesan @ Kaivandi Ganesan, the detenu herein, a resident of TMC Colony, Selvanayagapuram, Melur Post, Tuticorin District. The District Collector cum District Magistrate, Tuticorin, by his proceedings in H.S.(M) Confdl. No.22/2014 dated 03.10.2014, detaining him under Tamil Nadu Act 14 of 1982, branding him as a 'Drug Offender'. Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner, the learned Additional Public Prosecutor for the respondent State and we have also perused the records carefully.

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

3. Though several grounds have been raised in the petition, the learned counsel for the petitioner would focus his arguments mainly on



the ground that the subjective satisfaction arrived at by the Detaining Authority that there was a real possibility of the detenu being released on bail is founded on no materials. Thus, in an arbitrary manner, the Detaining Authority, according to the learned counsel, has recorded that he was satisfied that the detenu was likely to be released on bail.

4. But the learned Additional Public Prosecutor would oppose the said plea. According to him, it is true that the detenu did not file any application before any Court for bail. But, according to the Detaining Authority, there was likelihood of the detenu moving an application for bail and in such an event, he was likely to be released on bail. The learned Additional Public Prosecutor would submit that in a similar case, in Crime No.94 of 2007, this Court in Cr.M.P.No.5506 of 2007 by order dated 02.07.2007 had granted bail. Therefore, according to the learned Additional Public Prosecutor, the satisfaction arrived at by the Detaining Authority was based on materials and it was recorded for sound reasons.

5. We have considered the above submissions.

6. In paragraph No.4 of the detention order, the Detaining Authority has stated that so far, the detenu had not filed any application for bail before any Court. At the same time, in the order, the Detaining Authority has stated that there was real possibility of the detenu filing an application for bail and get an order of bail. It may be true that in the event, an application for bail was filed, the appropriate Court was likely to grant bail. To that extent, the satisfaction may not be assailed. But for arriving at the subjective satisfaction that the detenu was likely to file a bail application, absolutely, there is no material. No one has stated that some efforts had been taken by any of his relatives or by the detenu himself to move an application for bail. Thus, in our considered view, the satisfaction arrived at by the Detaining Authority that the detenu was likely to move an application for bail and on that opinion, he was likely to be released on bail is based on no material.

7. In an identical situation, a Division Bench of this Court in **Pownammal vs. State of Tamil Nadu and others** reported in **2008 (4) CTC 505**, in paragraph No.5 has held as follows:

"5.As the detaining authority, who aware of the fact that the detenu was in remand and he would file a bail application and there is a possibility of coming out on bail, to arrive at a fair conclusion, he should apply his mind to the fact whether the detenu was in remand in the ground case as well as in the adverse cases. Factually in this case a requisition was made by the Sponsoring Authority for remand of the detenu in both ground and adverse cases, as could be seen from page 71 of the booklet viz., the requisition for remand. From the grounds of detention also it is seen that the Sponsoring Authority had informed the detaining authority as to the fact that the detenu was in remand in the adverse case in Hosur Police Station Cr.No.505 of 2007 from 26.12.2007. However, the Detaining Authority only referred the remand of the detenu in the ground case and has failed to consider that he was in remand in the adverse case also. In order to form an opinion that the detenu may come out on bail, the consideration of remand



is essential. Even assuming that the detenu moved a bail application and came out of bail in the ground case, in the absence of satisfaction as to whether he has filed any application in the adverse case as well and there is a possibility of coming out on bail, the detention order is vitiated for non application of mind. Accordingly, it is liable to be set aside."

In the instant case, applying the same yardstick, we are inclined to set aside the detention order.

8. In the result, the Habeas Corpus Petition is allowed and the impugned order of Detention in H.S.(M) Confdl. No.22/2014 dated 03.10.2014 passed by the District Collector cum District Magistrate, Thoothukudi, is quashed. The Detenu, Ganesan @ Kaivandi Ganesan, Son of Sankaran, is directed to be released forthwith, unless his presence is required in connection with any other case.

sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

RR

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George/Secretariat,
Chennai - 600 009.
- 2.The District Collector cum
District Magistrate,
Thoothukudi District
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli.
- 4.The Joint Secretary to Government(law&Order)
Fort st., George, Chennai-9.
- 5.The Director General of Police, Chennai-9.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P (MD) No.285 of 2015

04.08.2015

cs1/NGM-SS/SAR-II/25.08.2015
3P/7C