



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2016

CORAM:

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

H.C.P(MD)No.1353 of 2015

Prabhu @ Prabakaran

.. 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 and District Magistrate,
Ariyalur District, Ariyalur.

3.The Superintendent of Prison,
Trichy Central Prison,
Trichy.

.. 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 leading to the detention of the petitioner Prabhu @ Prabakaran S/o.Ramakrishnan under Act 14/82 vide detention order dated 11.03.2015 on the file of the second respondent herein made in Cr.M.P.No. 05/2015 and quash the same as illegal and consequently direct the respondents herein to produce the body and person of the said Prabhu @ Prabakaran S/o. Ramakrishnan aged about 33 years now confined at Central Prison Trichy before this Court and thereafter set him at liberty.

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

O R D E R

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

The petitioner is the detenu. He has been detained by the second respondent by his order in Cr.M.P.No.05/2015, dated 11.03.2015, 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.25 of 2015 registered on the file of Thirumanur Police Station for an offence punishable under Section 392 of the Indian Penal Code and the following three adverse cases:

(i)Crime No.35 of 2015 registered on the file of
Thirumanur Police Station, Thanjavur District for
offences punishable under Sections 457 and 380 of the Indian
Penal Code;



(ii) Crime No.43 of 2015 registered on the file of Thiruppanandal Police Station, Thanjavur District for offences punishable under Sections 457 and 380 of the Indian Penal Code; and

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(iii) Crime No.69 of 2015 registered on the file of Thiruvidaimaruthur Police Station, Thanjavur District for offences punishable under Sections 457 and 380 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 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 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 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 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 and 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 released on bail.

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 others reported in (2012) 7 SCC 181, which has also been followed by this Court in an unreported decision in H.C.P(MD).No.1567 of 2015 [Sri Devi Vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others], vide order dated 14.12.2015.

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 - 5 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:

"I am aware that Thiru.Prabhu @ Prabhakaran, Son of Ramakrishnan, is remand in Thirumanur Police Station Cr.No.25/2015, under Section 392 IPC and has not filed any bail application for the aove case so far. In a similar case registered in Ariyalur District, Ariyalur Police Station Cr.No.158/2014 u/w 392 IPC bail was granted to the one accused Thiru.Balu S/o.Chinnakalai by the Judicial Magistrate Court,



Ariyalur in CMP No.4973 of 2014 dated 04.07.2014, who was remanded on 21.05.2014 and hence there is real possibility of his (Thiru.Prabhu @ Prabhakaran) coming out on bail for the above case."

8. The Detaining Authority referred to the fact that no bail application was filed in the ground case, namely, Crime No.25/2015 registered on the file of Thirumanur Police Station. However, the Detaining Authority proceeded further to express a 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 by the learned Judicial Magistrate Court, Ariyalur. Such a comparison of bail order 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 followed by this Court in an unreported decision in H.C.P(MD).No.1567 of 2015 [Sri Devi Vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others], vide order dated 14.12.2015. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is 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 11.03.2015, made in Cr.M.P.No.05/2015, by the second respondent, the District Collector and District Magistrate, Ariyalur District, Ariyalur and directs the release of the detenu by name Prabu @ Prabakaran S/o. Ramakrishnan aged about 33 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Secretary to Government,State of Tamil Nadu Home, Prohibition and Excise Department, Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,Ariyalur District, Ariyalur.
- 3.The Superintendent of Prison,Trichy Central Prison, Trichy.
(In duplicate to communicate the detenu)
- 4.The Additional Public Prosecutor,Madurai Bench of Madras High Court, Madurai.
- 5.The Joint Secretary to Government Public (Law and Order)Department, Fort St.George, Chennai-9

+1CC to R.Gandhi,Advocate, SR.No. 1327

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