



WEB COPY

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.1421 of 2015

M.Malathi @ Madathi

... Petitioner

Vs.

1.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

2.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

3.The Inspector of Police,
Tenkasi Police Station,
Tirunelveli City.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to produce the person or body of detenu namely Mari alias Vathumari aged about 36 years S/o.Paul Thevar before this Court who is now detained in the Central Prison, Palayamkottai, Tirunelveli in pursuant to the detention order passed by the first respondent in M.H.S.Confdl No. 99/2015 dated 02.09.2015 and to call for the records and quash the same and release the detenu at liberty forthwith.

For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mr.A.Ramar

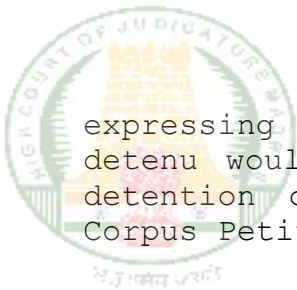
Additional Public Prosecutor

O R D E R

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

The petitioner is the wife of the detenu viz., Mari alias Vathumari S/o.Paul Thevar. The detenu has been detained by the first respondent by his order in M.H.S.Confdl No. 99/2015, dated 02.09.2015, 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.361 of 2015 registered on the file of Tenkasi Police Station for offences punishable under Sections 294(b), 323, 307 and 506(ii) of the Indian Penal Code and the adverse case in Crime No.456 of 2014 registered on the file of Tenkasi Police Station for offences punishable under Sections 174 Cr.P.C., (suspicious death) altered to Sections 147, 148 and 302 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 a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the following contentions:-

(i) The subjective satisfaction of the detaining authority regarding the imminent possibility of the detenu coming out on bail in the ground case, namely Crime No.361 of 2015 registered on the file of Tenkasi Police Station, is nothing but *ipse dixit*, not supported by cogent materials.

(ii) Even though the detaining authority adverted to the grant of bail to one Lakshmanan, a co-accused in the adverse case (Cr.No.456/2014) to express the subjective satisfaction of the detenu coming out on bail in the adverse case, the detaining authority failed to notice the fact that the said Lakshmanan was released on bail as he became entitled to a statutory bail under Section 167(2) of Cr.P.C. because of the non-compliance of the investigation within 90 days from the date of his arrest. The detenu Mari @ Vathumari was arrested only on 07.08.2015 and no statutory bail under Section 167(2) Cr.P.C. accrued to him by the time the detention order came to be passed. As such, though Lakshmanan happened to be a co-accused, the comparison of his case of release on statutory bail under Section 167(2) Cr.P.C. with the case of the detenu - Mari @ Vathumari in respect of whom no such statutory bail was accrued is improper and the same will also show non application of mind on the part of the detaining authority.

4. In support of his first 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.

5. The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

6. In paragraph - 5 of the grounds of detention, while dealing with the above said subjective satisfaction, the Detaining Authority has made the following observation:-

"I am aware that Thiru.Mari alias Vathumari has not moved any bail application so far in Tenkasi Police Station Crime No.456/2014. 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 this case bail has been granted to Thiru.Mari @ Vathumari's associate Lakshmanan in CRMP No.2249/2015, dated



05.03.2015 by the Judicial Magistrate, Tenkasi. I therefore, infer that there is real possibility of his (Thiru.Mari @ Vathumari) coming out on bail in Tankasi Police Station Crime No.456/2014; since bails are granted by the appropriate Courts in such cases. I I am aware that Thiru.Mari @ Vathumari is in remand in Tenkasi Police Station Crime No.361/2015 and in this case he has not moved any bail application so far. 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 a similar case bail has been granted to Alexander in CRMP No.2210/2015 dated 15.04.2015 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of his (Thiru.Mari @ Vathumari) coming out on bail in Tankasi Police station Crime No.361/2015 since bails are granted by the appropriate courts in such cases."

7.The Detaining Authority referred to the fact that no bail application was filed in the ground case, namely, Crime No.361/2015 registered on the file of Tenkasi 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 Principal Sessions Judge, Tirunelveli. 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 **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, the first ground raised by the learned counsel for the petitioner is bound to be countenanced and on that ground, the order of detention is liable to be set aside.

8.So far as the second contention is concerned, as rightly contended by the learned counsel for the petitioner, though a bail order granted to a co-accused by name Lakshmanan was taken note of by the detaining authority to express subjective satisfaction regarding the real possibility of the detenu coming out on bail in the adverse case (Crime No.456/2014), the case of the detenu - Mari @ Vathumari is differed from that of Lakshmanan, since Lakshmanan came to be released on bail, as he had got a right to statutory appeal under Section 167(2) Cr.P.C., as revealed from the copy of the bail order found at page 213 in the booklet, whereas no such right to statutory bail had arisen to the detenu Mari @ Vathumari. Hence, as rightly pointed out by the learend counsel for the petitioner, there is improper comparison and it also reflects non application of mind on the part of the detaining authority in respect of the comparability of the case of Lakshmanan and the detenu, the same will vitiate the order of detention. On both the grounds, the order of detention is liable to be set aside.



9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 02.09.2015, made in M.H.S.Confdl.No.99/2015, by the first respondent, the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu by name Mari alias Vathumari aged about 36 years S/o.Paul Thevar 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

mj/gcg

To

- 1.The District Collector and District Magistrate,
Tirunelveli District,Tirunelveli.
- 2.The Secretary to Government, Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 3.The Inspector of Police, Tenkasi Police Station, Tirunelveli City.
- 4.The Joint Secretary to Government, Publi (Law & Order) ,
Fort st. George, Chennai-9.
- 5.The Superintendent of Central Prison,
Palayamkottai, Tirunelveli District.
(In duplicate for communication to detenue)
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

CSL/SKS-RR/02.02.2016/4P/8C

H.C.P (MD) No.1421 of 2015
06.01.2016