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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2016

CORAM

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P.(MD)No.1437 of 2015

Karikalan @ Karikalcholan

..Petitioner

Vs

State of Tamil Nadu rep. by

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 9.

2.The District Collector and District Magistrate,
O/o.the District Collector and District Magistrate,
Ariyalur District,
Ariyalur.

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

..Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the entire records relating to the detention order of the Respondent No.2 in Cr.M.P.No.17/2015, dated 28.09.2015, quash the same and set aside the same as illegal and direct the respondents to produce the petitioner viz., Karikalan @ Karikalcholan S/o.Kathirvel, Male, aged 44 years, who is detained in Central Prison, Tiruchirappalli 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

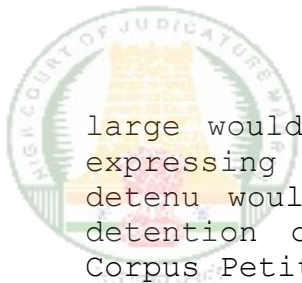
(Order of the Court was made by P.R.SHIVAKUMAR, J.)

The petitioner is the detenu. He was detained by the second respondent by his Detention Order in Cr.M.P.No.17/2015, dated 28.09.2015, holding him to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.139 of 2015 on the file of Sendurai Police Station registered for offences punishable under Sections 147, 148, 452, 342, 302, 294(b) and 506(ii) of the Indian Penal Code and the following adverse case:-

"Crime No.261 of 2013 registered on the file of Sendurai Police Station for offences punishable under Sections 147, 148, 294(b), 342, 323 and 324 IPC @ 147, 148, 294(b), 323, 324 and 326 of the Indian Penal Code."

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

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.

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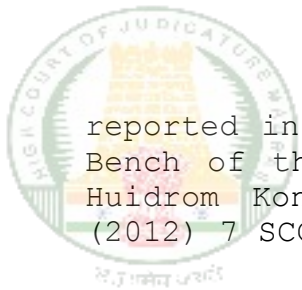
3. Though the detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that in the ground case the bail application filed by the petitioner was dismissed and no further bail application was filed, but still the detaining authority expressed subjective satisfaction that there was a real possibility of the detenu coming out on bail in the ground case and that the said comparison to express subjective satisfaction is against the dictum 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 and also the judgment of this Court in *H.C.P (MD).No.1567 of 2015 dated 14.12.2015 [Sri Devi Vs. State of Tamil Nadu and others]*."

4. We heard the submissions made by the learned Additional Public Prosecutor on the above said submission made on behalf of the petitioner and the submissions made by the learned Additional Public Prosecutor are also taken into consideration.

5. Regarding the subjective satisfaction of the detaining authority as to the real possibility of the detenu coming out on bail in the ground case, the detaining authority made the following observation:

"I am aware that Thiru.Karikalan @ Karikalcholan, Son of Kathirvel, is in remand in Sendurai Police Station Cr.No.139/2015, and he has moved bail application before the Principal District and Sessions Court, Ariyalur in Cr.M.P.No.983/2013 and it was dismissed on 18.09.2015. In a similar case registered in Ariyalur District, Sendurai PS Cr.No.57/2015, bail was granted to the one accused Thiru.Senthil @ Senthilkumar Son of Kasinathan by the Principal District and Sessions Court, Ariyalur in Cr.M.P.No.529/2015 dated 16.06.2015, who was remanded on 28.04.2015. Hence, I draw the inference that there is a real possibility of his (Thiru.Karikalan @ Karikalcholan) coming out on bail for the above case by filing another bail application to the appropriate Court."

6. It is an admitted fact that no bail application was pending, as on the date of passing of the detention order, in the ground case and the same was also taken note of by the detaining authority. When no bail application is pending, the detaining authority can refer to a bail granted to a co-accused in the same case to express the subjective satisfaction of the real possibility of the detenu coming out on bail. Only in case a bail application is pending, the detaining authority can refer to a similar case in which bail was granted to the accused therein, in support of his subjective satisfaction regarding the real possibility of the detenu coming out on bail. It has been held so by this Court in *H.C.P (MD) No.1567 of 2015 dated 14.12.2015 [Sri Devi Vs. State of Tamil Nadu and others]*, following the judgment 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, which position was clarified by a Division Bench of the Hon'ble Supreme Court consisting of two Hon'ble Judges in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181.

7.Hence, we come to the conclusion that the subjective satisfaction expressed by the detaining authority regarding the real possibility of the detenu coming out on bail in the ground case to justify the clamping of the order of detention, while the detenu was in custody as a remand prisoner, can be termed "*ipse dixit*" not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.

8.In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 28.09.2015, made in Cr.M.P.No.17/2015, by the second respondent / the District Collector and District Magistrate, Ariyalur District, Ariyalur and directs the release of the detenu by name Karikalan @ Karikalcholan S/o.Kathirvel, aged about 44 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS)

To

- 1.The Secretary to Government, State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
O/o.the District Collector and District Magistrate,
Ariyalur District,
Ariyalur.
- 3.The Superintendent of Central Prison,
Central Prison, Tiruchirappalli.
- 4.The Joint Secretary to Government,
Public (Law & Order) Dept.,
Fort St.George, Chennai.
- 5.The Commissioner of Police,
Trichy District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.A.S.Prabhu, Advocate in SR.1437

H.C.P. (MD) No.1437 of 2015
07.01.2016

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PBK/PM-MP/SAR-II 12.01.2016 ::3P-7C: