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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.1494 of 2015

Kulanthaivelu @ Kulanthairaj

.. Petitioner

Vs

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,
Office of the District Collector,
Virudhunagar District.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

.. 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.16/Sexual Offender/2015, dated 26.09.2015, quash the same and direct the respondents to produce the body or person of the detenu by name Kulanthaivelu @ Kulanthairaj S/o.Murugan, aged about 27 years, now detained in Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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.16/Sexual Offender/2015, dated 26.09.2015, holding him to be a "Sexual Offender", as contemplated under Section 2(ggg) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.16 of 2015 on the file of Sivakasi All Women Police Station registered for offences punishable under Sections 366-A, 376 and 506(ii) of the Indian Penal Code r/w 5(h), (m), (l), (i) & 6 of POCSO Act, 2012.



2.The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of 'Sexual Offender' 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 detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the following contention:

"The detaining authority referred to a bail order in a different case when no bail application was pending as on the date of the order of detention in the ground case. 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 submissions 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. Kulanthaivelu @ Kulanthairaj is remanded in Sub Jail, Srivilliputhur upto 14.09.2015 and then the remand period extended upto 05.10.2015 as per the Srivilliputhur Mahila Court order. In this case he did not file any bail application in any Court. In a similar case registered at Sivakasi All Women Police Station Crime No.26/2013 under Section 366 IPC r/w 8 of POCSO Act 2012 @ 366, 376 & 506(i) IPC r/w 4 of POCSO Act 2012 bail was granted to the accused Thiru.Marimuthu aged 35 years by the Principal Sessions Judge, Srivilliputhur in Cr.M.P.No.5601/2013, dated 31.10.2013 and also in Sattur All Women Police Station Crime No.05/2014 under Section 6 of POCSO Act 2012 & 506(ii) IPC bail was granted to the accused Thiru.Murali aged 27 years by the Principal Sessions Judge, Srivilliputhur in Cr.M.P.No.2506/2014, dated 05.05.2014. Hence, there is a real possibility of his (Thiru. Kulanthaivelu @ Kulanthairaj) coming out on bail by filing a bail application for the above case before the same Court or Higher Court."



6. It is an admitted fact that no bail application was filed by the detenu 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 26.09.2015, made in Cr.M.P.No.16/Sexual Offender/2015, by the second respondent / the District Collector and District Magistrate, Virudhunagar District, Virudhunagar and directs the release of the detenu by name Kulanthaivelu @ Kulanthairaj S/o.Murugan, aged about 27 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

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,
<https://hcservices.ecourts.gov.in/hcservices/>
Office of the District Collector,
Virudhunagar District.



3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

(In Duplicate to communicate the detenu)

4. The Joint Secretary to Government,
Public (Law and Order), Fort St. George, Chennai -9.

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

+1cc to Mr.R.Alagumani, Advocate SR.No.1635

akm/12.01.2016/ 4p- 8c/GSV/AN/SAR-II

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