



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2016

CORAM

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

H.C.P.(MD)No.1500 of 2015

Amutha

.. Petitioner

Vs

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.

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

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

.. Respondents

PRAYER: 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 M.H.S.Confdl.No.74/2015, dated 07.07.2015, quash the same and direct the respondents to produce the petitioner's son / detenu by name Maharajan S/o.Perumal, aged about 27 years, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.M.Maran

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 mother of the detenu viz., Maharajan S/o.Perumal. The detenu was detained by the second respondent by his Detention Order in M.H.S.Confdl.No.74/2015 dated 07.07.2015 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.197 of 2015 on the file of Thalaiyuthu Police Station registered for offences punishable under Sections 341, 294(b), 387 and 506(ii) of the Indian Penal Code and the following three adverse cases:-

(i) Crime No.319 of 2012 registered on the file of Thalaiyuthu Police Station for an offence punishable under Section 379 of the Indian Penal Code;



(ii) Crime No.323 of 2012 registered on the file of Thalaiyuthu Police Station for an offence punishable under Section 294(b), 387 and 506(ii) of the Indian Penal Code; and

(iii) Crime No.355 of 2015 registered on the file of Thalaiyuthu Police Station for an offence punishable under Section 147, 148, 294(b), 302 and 506(ii) of the Indian Penal Code @ 147, 148, 294(b), 302, 506(ii), 109 and 120-B 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 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:

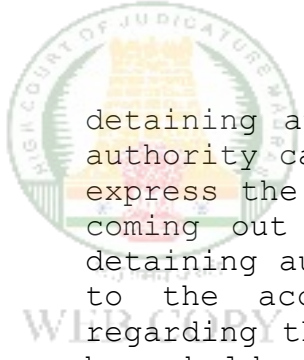
"The detaining authority referred to a bail order in a different case when no bail application was pending as on the date of the order of detention in the ground case. The said comparison to express subjective satisfaction is against the dictum of the Hon'ble Supreme Court consisting of three Hon'ble 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 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.Maharajan is in remand in Thalaiyuthu Police Station Crime Number 197/2015 and 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 Maharajan in CRMP.No.3684/2012 dated 29.10.2012 by the learned Judicial Magistrate No.III, Tirunelveli. I therefore infer that there is real possibility of his (Thiru.Maharajan) coming out on bail in Thalaiyuthu Police Station Crime Number 197/2015; since bails are granted by the appropriate Courts in such cases."

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 07.07.2015, made in M.H.S.Confdl.No.74/2015, by the second respondent / the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu by name Maharajan S/o.Perumal, 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(crl.side)

/True copy/

Sub AssistantRegistrar

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,
Tirunelveli District,
Tirunelveli.

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



3.A) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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

+1cc to M/s.M.Maran, Advocate SR.No.1898

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H.C.P. (MD) No.1500 of 2015
11.01.2016