



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2016

CORAM:

**THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
AND**

**THE HONOURABLE MR.JUSTICE V.S.RAVI
H.C.P. (MD) No.1506 of 2015**

Balu Nadar

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Collector / District Magistrate,
Thanjavur District,
Thanjavur.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus to call for the records relating to the detention order dated 12.06.2015 made in P.D.No.30/2015 passed by the second respondent herein, quash the same and direct the respondents to produce the body or person of the petitioner's son - Pon Raj @ Ponnaiah S/o.Balu Nadar, aged about 32 years, who is detained at Central Prison, Trichy, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Pon Karthikeyan
For Respondents : Mr.A.Ramar,
Additional Public Prosecutor

ORDER

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

The petitioner is the father of the detenu viz., Ponraj @ Ponnaiya, aged about 32 years. The detenu has been detained by the second respondent by his order in P.D.No.30/2015, dated 14.08.2015, 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.150 of 2015 on the file of Thanjavur Taluk Police Station registered for offences punishable under Sections 294(b), 392 and 506(ii) of the Indian Penal Code and the following six adverse cases:-

(i)Crime No.45 of 2015 on the file of Tamil University Police Station registered for offences punishable under Sections 457 and 380 of the Indian Penal Code;

(ii) Crime No.115 of 2015 on the file of Thanjavur Taluk Police Station registered for offences punishable under Sections 457 and 380 of the Indian Penal Code;

(iii)Crime No.21 of 2015 on the file of Kallaperambur



Police Station registered for offences punishable under Sections 457 and 380 of the Indian Penal Code;

(iv) Crime No.25 of 2015 on the file of Kallaperambur Police Station registered for alleged offences punishable under Sections 454 and 380 of the Indian Penal Code;

(v) Crime No.146 of 2015 on the file of Thanjavur Taluk Police Station registered for alleged offences punishable under Sections 457 and 380 of the Indian Penal Code; and

(vi) Crime No.149 of 2015 on the file of Thanjavur Taluk Police Station registered for alleged 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 the "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 as well as in all the averse cases, 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 as well as in all the adverse cases. But the detaining authority expressed subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case based on a bail order granted in respect of another person, not being a co-accused in the ground case, in respect of yet another 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.

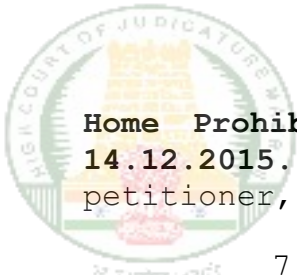
5. In Paragraph No.5 of the grounds of detention, the Detaining Authority, expressing his subjective satisfaction regarding the possibility of the detenu coming out on bail, made the following observation:

"5) Thirumathi. Poomari, Wife of the accused Thiru.Ponraj alias Ponnaiya is taking action to take out her husband, Thiru.Ponraj alias Ponnaiya on bail for the cases seven registered in 1) Thanjavur Taluk police Station Crime Number 150/2015, under Sections 294(b), 392 and 506(ii) of Indian Penal Code read with Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992; 2) Tamil University, Police Station Crime Number 45/2015, under Sections 457 and 380 of the Indian penal Code; 3) Thanjavur Taluk Police Station Crime Number 115/2015, under Sections



457 and 380 of the Indian penal Code; 4) Kallaperambur Police Station Crime Number 21/2015, under Sections 457 and 380 of the Indian penal Code; 5) Kallaperambur Police Station Crime Number 25/2015, under Sections 454 and 380 of the Indian penal Code; 6) Thanjavur Taluk Police Station Crime Number 146/2015, under Sections 457 and 380 of the Indian penal Code; and 7) Thanjavur Taluk Station Crime Number 149/2015, under Sections 457 and 380 of the Indian Penal Code, by filing bail applications before the appropriate Court. Moreover, in a similar case, identical in the Ground case registered in Thanjavur Medical College Hospital Police Station Crime Number 69/2013, under Sections 294(b), 352, 392 and 506(ii) of Indian Penal Code, 1992, condition bail was granted to the accused Egbert by the Principal District and Sessions Court, Thanjavur in Crl.M.P.No.984/2013, dated 02.03.2013. Likewise, in a similar case identical to the adverse case (Kallaperambur Police Station Crime Number 25/2015) registered in Thanjavur Taluk Police Station Crime Number 366/2014, under Sections 454 and 380 of Indian Penal Code, condition bail was granted to the accused Martin Hendry alias Martin by the Judicial Magistrate No.II Court, Thanjavur in Crl.M.P.No.177/2015, Dated : 19.01.2015. Likewise, in a similar case identical to the five adverse cases 1) Tamil university Police Station Crime Number 45/2015, 2) Kallaperambur Police Station Crime Number 21/2015 and 3) Thanjavur Taluk Police Station Crime Number 503/2014, under Sections 457 and 389 of the Indian Penal Code, condition bail was granted to the accused Melvin Sahayaraj by the Judicial Magistrate No.II Court, Thanjavur in Crl.M.P.No.9993/2014, dated 19.01.2015. Hence, there is a real possibility of his (Thiru.Ponraj alias Ponnaiya) coming out on bail by filing bail petitions for the above said seven cases before the appropriate Court, since bails are granted by the Court in such cases."

6. The Detaining Authority referred to the fact that the bail applications filed in the adverse case Nos.1, 2, 3 and 5, were dismissed by the learned Judicial Magistrate No.II, Thanjavur, vide CR.M.P.Nos.3979, 3977, 3980 and 3978 of 2015 respectively, on 02.06.2015 and that thereafter, no bail application was filed in the above said cases. The detaining authority has also referred to the fact that in the ground case and in the adverse case Nos.4 and 6 no bail application was filed as on the date of passing the order of detention. However, the Detaining Authority proceeded further to express a subjective satisfaction that there was a real possibility of the detenu coming out on bail by filing bail applications in the ground case as well as in all the adverse cases, based on bail orders granted to the accused in different cases. 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 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.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 12.06.2015 made in P.D.No.30/2015, by the second respondent / the District Collector and District Magistrate, Thanjavur District, Thanjavur and directs the release of the detenu by name Ponraj @ Ponnaiya S/o.Balu Nadar, aged about 32 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 Assistant Registrar

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To

- 1.The Secretary,
State of Tamil Nadu, Home Prohibition & Excise Department,
St. George Fort, Chennai-600 009.
- 2.The District Collector / District Magistrate,
Thanjavur District, Thanjavur.
- 3.The Superintendent, Central Prison, Trichy.
- 4.The Joint Secretary to Government,
Public (Law & Order) Fort Saint George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

CSL/SKS-RR/02.02.2016/4P/6C

Order made in
H.C.P. (MD) No.1506 of 2015
Dated: 11.01.2016