



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2016

CORAM:

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

H.C.P. (MD) No.1593 of 2015

Nagarajan @ Kakka Nagarajan

: Petitioner

Vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai-600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

: 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 entire records, connected with the detention order of the second respondent in M.H.S.Confdl.No.122 of 2015, dated 05.11.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Nagarajan @ Kakka Nagarajan, S/o.Krishnamoorthy, aged about 32 years, now detained at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Ramar,

Additional Public Prosecutor

ORDER

[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 order in M.H.S.Confdl.No.122 of 2015, dated 05.11.2015, 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.400 of 2015 on the file of Panagudi Police Station registered for alleged offences punishable under Sections 294(b), 307 and 506(ii) of the Indian Penal Code and the following four adverse cases:-

- (i) Crime No.327 of 2014 registered on the file of Panagudi Police Station for alleged offences punishable under Sections 294(b), 307 and 506(ii) of the Indian



Penal Code;

(ii) Crime No.133 of 2015 registered on the file of Panagudi Police Station for alleged offences punishable under Sections 294(b) and 506(ii) of the Indian Penal Code;

(iii) Crime No.138 of 2015 registered on the file of Panagudi Police Station for alleged offences punishable under Sections 294(b), 307 and 506(ii) of the Indian Penal Code; and

(iv). Crime No.255 of 2015 registered on the file of Panagudi Police Station for alleged offences punishable under Sections 294(b), 387 and 506(ii) 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 public peace 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 order of detention is assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that the subjective satisfaction of the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case is not based on cogent materials and the same may be termed as *ipse dixit*.

4. In elaboration of the said contention, the learned counsel for the petitioner submits that the subjective satisfaction regarding the real possibility of the detenu coming out on bail in a case, wherein no bail application is pending, cannot be based on any other case in respect of other persons and that the very fact that no bail application is pending will negative the imminent possibility of the detenu coming out on bail, subject to an exception that a co-accused in the very same case placed under similar circumstances has been released on bail.

5. In support of his 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 a Division Bench of the Madras High Court in **H.C.P.No.1154 of 2015**, dated 11.08.2015 [**Chandrakala Vs. The Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others**].

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

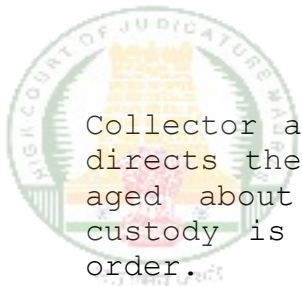
7. In paragraph No.6 of the grounds of detention, the Detaining Authority, expressing his subjective satisfaction regarding the possibility of the detenu coming out on bail, made the following observation:



"I am aware that Thiru.Nagarajan alias Kakka Nagarajan filed a bail petition before the Principal Sessions Court, Tirunelveli, in CRMP.No.4744 of 2014 in Panagudi Police Station Crime No.327/2014 and the bail petition was dismissed on 14.10.2014 and further in this case he filed a bail petition before the Madurai Bench of Madras High Court in CrI.OP[MD].No.19087 of 2014 and the bail was granted on 28.10.2014. I am aware that the anticipatory bail was granted to him before the Principal Sessions Court, Tirunelveli, in CRMP.No.2376/2015 on 30.04.2015 in Panagudi Police Station Crime No.133/2015. I am aware that the anticipatory bail was granted to him before the Principal Sessions Court, Tirunelveli in CRMP.No.2377/2015 on 18.04.2015 in Panagudi Police Station Crime No.138/2015. I am aware that the bail was granted to him before the Judicial Magistrate, Valliyoor in CRMP No.8865/2015, on 30.09.2015 in Panagudi Police Station Crime No.255/2015. I am aware that Thiru.Nagarajan alias Kakka Nagarajan is in remand in Panagudi Police Station Crime No.400/2015 and in this case, he has not filed 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 Muthuraman in CRMP.No.3994 of 2014, dated 15.09.2014 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of his [Thiru Nagarajan alias Kakka Nagarajan] coming out on bail in Panagudi Police Station Crime No.400/2015, since bails are granted by the appropriate Courts in such cases.

8. The Detaining Authority referred to the fact that no bail application was filed in the ground case, namely, Crime No.400/2015 registered on the file of Panagudi 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 a Division Bench of the Madras High Court in **H.C.P.No.1154 of 2015, dated 11.08.2015 [Chandrakala Vs. The Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others]**. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is vitiated on the said ground alone.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 05.11.2015, made in M.H.S.Confdl.No.122 of 2015, passed by the second respondent, the District



Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu, by name Nagarajan @ Kakka Nagarajan, aged about 32 years, S/o.Krishnamoorthy forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

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

+ 1 CC TO M/S.R.ALAGUMANI, ADVOCATE IN SR NO. 525/16

NB

TE/JGB-DP/: 22/01/2016 : 4P/7C

Order made in
H.C.P. (MD) No.1593 of 2015
Dated:
04.01.2016