



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.01.2016

CORAM:

WEB COPY

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

H.C.P (MD) No.1607 of 2015

Shanmugavalli

.. Petitioner

Vs.

1.The Secretary to Government,
Government of Tamil Nadu,
Public (Law and Order-F) Department,
Fort.St.George, Secretariat,
Chennai - 600 009.

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

3.The Secretary to Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi - 110001.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records in connection with the order of detention passed by the second respondent dated 08.10.2015 in Cr.M.P.No.10/NSA/2015 and set aside the same, consequently direct the respondents herein to produce the person or body of the petitioner's husband Thiru.Kathiresan, aged 45 years, S/o.Sathan, now confined in Central Prison, Madurai and set him at liberty.

For Petitioner : Mr.R.Shanmugasundaram
Senior Counsel for
Mr.S.Ravi

For respondents 1&2 : Mr.S.Shanmuga Velayutham,
Public Prosecutor
assisted by Mr.A.Ramar,
Additional Public Prosecutor.

For 3rd respondent : Mr.J.Jeyakumaran,
Central Government Standing Counsel

ORDER

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

The petitioner is the wife of the detenu. He has been detained under the National Security Act, 1980 by the second respondent/the District Collector and District Magistrate, Ramanathapuram District, Ramanathapuram by virtue of the detention order in Cr.M.P.No.10/NSA/2015, dated 08.10.2015, taking note of the ground case in Crime No.58 of 2015 registered on the file of Mandalamanickam Police Station for offences punishable under Sections 147, 148, 294(b), 341, 336, 323 and 307 of the Indian Penal Code and the following two adverse cases:-

(i). Crime No.230 of 2014 registered on the file of B1 Town Police Station for offences punishable under Sections 341 and 353 of the Indian Penal Code; and

(ii). Crime No.349 of 2015 registered on the file of Paramakudi Town Police Station for offences punishable under Sections 143, 341, 353 and 506(i) of the Indian Penal Code.

2. 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*.

3. 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.

4. 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 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



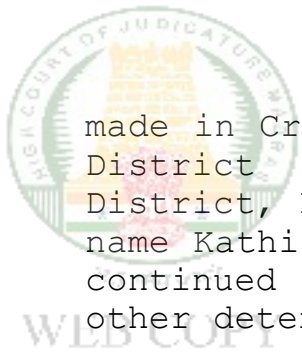
5. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

6. In Paragraph No.3 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.Kathiresan is in judicial custody in Central Prison, Madurai, in connection with a case was registered in Mandalamanickam P.S.Cr.No.58 of 2015, u/s 147, 148, 294(b), 341, 336, 323 and 307 IPC. The accused Kathiresan did not file a petition in any other Court in ground case. However, it is likely he would file bail petition in the Court through his relative thereby he released on bail. In a similar case which was registered in Kamuthi P.S.Cr.No.163/2015, u/s294(b), 307 IPC, the accused Jeyakumar, 31/15, S/o.Selvam, Sengapadai, Kodarendal filed a bail petition in Sessions Court, Ramanathapuram, vide Cr.M.P.No.1707/2015, dated 26.06.2015 and bail was granted on 06.07.2015. Hence, I infer that it is very likely of his [Kathiresan] coming out on bail in the above case, since bails are granted by the Court in such cases".

7. The Detaining Authority referred to the fact that no bail application was filed in the ground case, namely, Crime No.58/2015 registered on the file of Mandalamanickam 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 Sessions Judge, Ramanathapuram. 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 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.

8. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 08.10.2015,



made in Cr.MP.No.10/NSA/2015, passed by the second respondent, the District Collector and District Magistrate, Ramanathapuram District, Ramanathapuram and directs the release of the detenu, by name Kathiresan, aged about 45 years, S/o.Sathan forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(Crl.Side)

/True copy/

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

NB

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Public (Law and Order-F) Department,
Fort.St.George, Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Ramanathapuram, Ramanathapuram District.
- 3.The Secretary to Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi - 110001.
- 4.The Superintendent, Central Prison, Madurai.
- 5.The Joint Secretary to Government,
Public (Law & Order), Fort.St.George, Chennai-9.
- 6.The Director General of Police, Chennai.
- 7.The Secretary to Government,
Prohibition and Excise Department, Fort.St.George, Chennai-9
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN
H.C.P (MD) No.1607 of 2015
05.01.2016

RG.PM-MP/SAR-II 08/01/2016 4P:9C