



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2016

CORAM:

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

H.C.P (MD) No.1644 of 2015

M.Junaitha Beevi : Petitioner

Vs.

- 1.The Secretary to the Government of India,
Ministry of Home Affairs
Department of Internal Security,
North Block,
New Delhi-110 001.
- 2.The Secretary to Government (Tamil Nadu),
Public (Law and Order-F) Department,
Secretariat,
Fort St. George,
Chennai-9.
- 3.The District Collector and District Magistrate,
Kanniyakumari District,
at Nagercoil.
- 4.The Inspector of Police,
Colachel Police Station, Kanyakumari District. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records connected with the detention order in P.D.No.01-N.S.A./2015, dated 08.11.2015 on the file of the third respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely Mohammed Rafi, S/o.Mohammed Alam, aged about 26 years now confined at Central Prison, Palayamkottai, Tirunelveli District before this Court and set him at liberty forthwith.

For Petitioner	: Mr.S.M.A.Jinnah
For Respondent No.1	: Mr.S.Jeyasingh, Central Government Counsel
For Respondents 2to4	: Mr.S.Shanmugavelayutham, Public Prosecutor Assisted by Mr.A.Ramar Additional Public Prosecutor

O R D E R

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

WEB COPY

The petitioner is the mother of the detenu-Mohammed Rafi, S/o.Mohammed Alam, aged about 26 years. The detenu has been detained by the third respondent by his order in P.D.No.01-N.S.A./2015, dated 08.11.2015, holding him to be an "anti-social element", in exercise of the powers conferred by Sub-Section (2) of Section 3 of the National Security Act, 1980 (Central Act 65 of 1980) read with the orders issued by the Government in G.O.Ms.No.1164 Public (Law and Order-F) Department, dated 19.10.2015 under Sub-Section (3) of Section 3 of the said Act, taking note of the ground case in Crime No.382 of 2015 registered on the file of Colachel Police Station for an offence punishable under Section 307 of the Indian Penal Code which was altered into a case for offences punishable under Sections 147, 148, 120-B, 153-A and 307 of the Indian Penal Code and the following three adverse cases:

"(i) Crime No.165 of 2015 registered on the file of Thuckalay Police Station for an offence punishable under Section 435 of the Indian Penal Code;

(ii) Crime No.86 of 2015 registered on the file of Colachel Police Station for an offence punishable under Section 435 of the Indian Penal Code; and

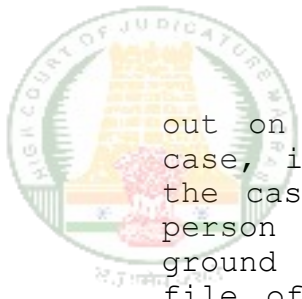
(iii) Crime No.160 of 2015 registered on the file of Eruvadi Police Station for offences punishable under Sections 364, 342 and 307 of the Indian Penal Code."

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of 'anti-social element' 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 order of detention is sought to be assailed on a number of grounds raised in the affidavit filed in support of the Habeas Corpus Petition, the learned counsel for the petitioner mainly relies on the following contentions:

"(i) The pre-detention representation made by the petitioner on behalf of the detenu was not properly considered by the Detaining Authority insofar as the Detaining Authority, in the order rejecting the pre-detention representation, referred to a different Judicial Magistrate as the Magistrate who remanded the detenu in the third adverse case, namely Crime No.160 of 2015 of Eruvadi Police Station. The remand order was passed by the Judicial Magistrate, Nanguneri, whereas the Detaining Authority stated in the rejection order that the remand order in the said case was passed by the Judicial Magistrate, Eraniel. The same will show the determination made by the Detaining Authority in advance to clamp an order of detention on the detenu under the National Security Act.

(ii) Though the Detaining Authority can base the subjective satisfaction regarding the real possibility of the detenu coming



out on bail taking note of a bail order passed in a similar case, if the bail application filed by the detenu is pending, the case in which such bail order passed in favour of another person should be a case similar to the case of the detenu. The ground case, namely, Crime No.382 of 2015 registered on the file of Colachel Police Station was for offence under Section 307 of the Indian Penal Code which was altered into a case for offences under Sections 147, 148, 120-B, 153-A and 307 of the Indian Penal Code and thus, the case was one triable by a Court of Session, whereas the bail order referred to as the one passed in a similar case was in respect of Crime No.113 of 2010 registered on the file of Nanguneri Police Station for offences under Sections 153-A and 295 of the Indian Penal Code alone. Both the offences triable by a Magistrate of the First Class. Hence, the case, in which the bail order relied on by the Detaining Authority to express his subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case, is not a similar case comparable with the ground case. As such, the subjective satisfaction regarding the real possibility of the detenu coming out on bail shall be vitiated as one not based on cogent materials."

4. We heard the submissions made by Mr.S.Jeyasingh, learned Central Government Counsel for the first respondent and Mr.S.Shanmugavelayutham, learned Public Prosecutor, assisted by Mr.A.Ramar, learned Additional Public Prosecutor and we considered the rival submissions made on both sides.

5. The detention order came to be passed on 08.11.2015. The petitioner submitted a pre-detention representation to the Detaining Authority on 05.11.2015. The same came to be rejected by a letter dated 06.11.2015 in Na.Ka.C2/1974/2015. A copy of the said letter of rejection of the pre-detention representation has also been produced by the petitioner in the typed-set of papers. The authenticity of the copy is not disputed by the learned Public Prosecutor. In the said letter rejecting the pre-detention representation, the Magistrate who remanded the detenu in Crime No.160 of 2015 on the file of Eruvadi Police Station came to be recited as 'the Judicial Magistrate, Eraniel', whereas the Judicial Magistrate who passed the remand order in the said case was the Judicial Magistrate, Nanguneri. A copy of the remand order in the said case is found at page 181 of the booklet. It is obvious from the said copy of the order that the remand report was submitted to the Judicial Magistrate, Nanguneri and the remand order came to be passed by the said Judicial Magistrate. As rightly contended by the learned counsel for the petitioner, the rejection letter contains an erroneous particular, which will show non-application of mind and also a pre-determination to clamp the order of detention.

6. In paragraph No.4 of the Grounds of Detention, the Detaining Authority, while expressing his subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case, has made the following observation:

"The accused Thiru.Mohammed Rafi, S/o.Mohammed Alam, https://hcservices.ecourts.gov.in/hcservices/ is a Hindu, 1948, Kanniyakumari District who (At the time of arrest resided at Near Government School, Kamaleswaram, Thiruvananthapuram, Thiruvananthapuram District, Kerala) was

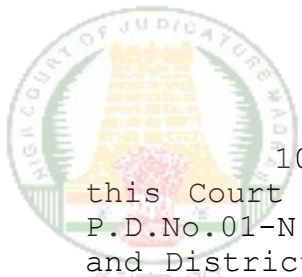


concerned in Colachel P.S. Cr.No.382/2015 u/s. 307 IPC @ 147, 148, 120-B, 153-A, 307 IPC was as remanded till 30.10.2015 and lodged in District Jail, Nagercoil as a remand prisoner. The remand period of the accused Thiru.Mohammed Rafi was extended upto 13.11.2015. In a similar case registered in Nanguneri Police Station Cr.No.113/2010 u/s.153-A, 295 IPC the accused Vanumamalai filed a bail petition before the court of Judicial Magistrate, Nanguneri vide Crl.M.P.No.5681/2010 dated 31.05.2010 and bail was granted on 02.06.2010. (The copy of the order in Crl.M.P.No.5681/2010 dated 02.06.2010 of the Judicial Magistrate, Nanguneri was enclosed with the typed set of papers). Hence I infer that since bail is granted in such cases by the courts, there is real possibility that he (Mohammed Rafi) may come out on bail by filing a bail application on his behalf either in the lower court or in the higher court."

7. From the same, it is obvious that the ground case registered in Crime No.382 of 2015 registered on the file of Colachel Police Station, initially for an offence under Section 307 of the Indian Penal Code, which was later on altered into a case for offences punishable under Sections 147, 148, 120-B, 153-A and 307 of the Indian Penal Code, was compared with a case registered in Crime No.113 of 2010 of Nanguneri Police Station registered for offences punishable under Sections 153-A and 295 of the Indian Penal Code to arrive at the subjective satisfaction of the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case.

8. As rightly contended by the learned counsel for the petitioner, the offence under Section 307 of the Indian Penal Code is triable by a Court of Session and hence, the ground case is a case triable by a Court of Session, whereas both the offences in the alleged similar case, namely offences under Sections 153-A and 295 of the Indian Penal Code are triable by a Judicial Magistrate. Hence, the comparison made by the Detaining Authority is improper insofar as the case in which the bail order relied on by the Detaining Authority to express subjective satisfaction of the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case, is not one passed in a similar case.

9. Of course, 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, has made an observation that when bail petition is pending, the Detaining Authority can refer to a bail order granted in any other case to express subjective satisfaction of the Detaining Authority regarding the real possibility of the detenu coming out on bail. The same was clarified by a Division Bench of the Supreme Court in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181, that to rely on such bail order in another case, the case should be similar to the case against the detenu in material aspects. As clarified by the Supreme Court in Huidrom's case, if an improper comparison is made, the same will vitiate the subjective satisfaction of the Detaining Authority. In the case on hand also, the Detaining Authority has made an improper comparison, comparing a Sessions Case with a case triable by a Judicial Magistrate. Hence, on both grounds, the order of detention is liable to be set aside.



10. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 08.11.2015, made in P.D.No.01-N.S.A./2015, by the third respondent, the District Collector and District Magistrate, Kanniyakumari District, at Nagercoil and directs the release of the detenu by name Mohammed Rafi, S/o.Mohammed Alam, aged about 26 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Secretary to the Government of India,
Ministry of Home Affairs
Department of Internal Security,
North Block,
New Delhi-110 001.
- 2.The Secretary to Government (Tamil Nadu),
Public (Law and Order-F) Department,
Secretariat,
Fort St. George, Chennai-9.
- 3.The District Collector and District Magistrate,
Kanniyakumari District,
at Nagercoil.
- 4.The Inspector of Police,
Colachel Police Station, Kanyakumari District.
- 5.The Superintendent, Central Prison,
Palayamkottai, Tirunelveli District.(In duplicate for communicate to
detenu)
- 6.The Joint Secretary to Government,
Public (Law and Order)Department,Fort St.George, Chennai.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC toMr.S.Jeyasingh, Advocate, SR.No. 3631

Order made in
H.C.P (MD)No.1644 of 2015
Dated: 21.01.2016

AM/22.01.2016/GSV.AN/SAR-II/5P/10C

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