



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2016

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

H.C.P.(MD)No.1655 of 2015

K.Lakshmi

.. Petitioner

Vs

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,
Tiruchirappalli District,
Tiruchirappalli.

.. Respondents

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 Cr.M.P.No.30/2015, dated 22.09.2015, quash the same as illegal and direct the respondents to produce the petitioner's son - detenu viz., Prabakaran, aged 28 years, S/o.K.R.Kumar, now detained at Central Prison, Trichy, before this Court and set him at liberty forthwith.

For Petitioner : Mr.A.Jayaramachandran

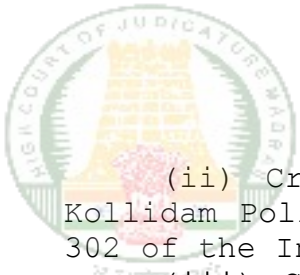
For Respondents : Mr.A.Ramar,
Additional Public Prosecutor

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., Prabakaran S/o.Kumar. The detenu was detained by the second respondent by his Detention Order in Cr.M.P.No.30/2015, dated 22.09.2015, holding him to be a "Goonda", as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.347 of 2015 on the file of Samayapuram Police Station registered for offences punishable under Sections 387 and 506(ii) of the Indian Penal Code and the following adverse cases:-

(i) Crime No.112 of 2014 on the file of Tiruchirappalli District
<https://hcservices.ecourts.gov.in/hcservices/>
Boiler Plant Police Station registered for an offence punishable under
Section 379 of the Indian Penal Code;



(ii) Crime No.221 of 2014 on the file of Tiruchirappalli District Kollidam Police Station registered for an offence punishable under Section 302 of the Indian Penal Code;

(iii) Crime No.220 of 2015 on the file of Tiruchirappalli District Kollidam Police Station registered for an offence punishable under Section 392 of the Indian Penal Code;

(iv) Crime No.75 of 2015 on the file of Tiruchirappalli District Pulivalam Police Station registered for offences punishable under Sections 419 and 395 of the Indian Penal Code; and

(v) Crime No.76 of 2014 on the file of Tiruchirappalli District Pulivalam Police Station registered for offences punishable under Sections 419 and 395 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 adverse 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 detenu was arrested in the ground case and thereafter remanded in the adverse cases on P.T. warrant and only in the ground case and in the first adverse case bail applications were filed by the detenu, in which the bail application filed for ground case was allowed and the bail application filed for the first adverse case was dismissed and no bail application was pending as on the date of the order of detention in all the adverse cases, but still the detaining authority referred to a bail order granted in a different case to express subjective satisfaction regarding the detenu coming out on bail in all the adverse cases. 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 adverse cases, the detaining authority made the following observation:

"5.I am also aware that Thiru.Prabakaran who was in remand in Samayapuram PS Cr.No.347/15, Boiler Plant PS Cr.No.112/2014, Pulivalam PS Cr.No.75/15, 76/15, Kollidam PS Cr.Nos.221/14, 220/15 and has filed for Boiler Plant PS Cr.No.112/2015 before the Judicial Magistrate No.VI, Tiruchirappalli in Cr.M.P.No.4058/2015 and the same was dismissed on 28.08.2015. In Samayapuram PS Cr.No.347/2015, he filed a bail petition before the Judicial Magistrate No.III, Tiruchirappalli in



Cr.M.P.No.5669/2015 and granted bail on 12.09.2015. In similar case registered in Kumbakonam West PS Cr.No.331/2014 bail was granted to Mathan @ Mathankumar @ Manikandan by the Principal Sessions Judge, Thanjavur in CR.M.P.No.4654/2014 on 23.12.2014. Hence, there is a real possibility of his (Prabakaran) coming out on bail by filing bail applications for the above cases before the appropriate Court. If he comes out on bail he may indulge in such further activities, which will be prejudicial to the maintenance of public order."

6.The Detaining Authority referred to the fact that the bail application filed in the ground case was allowed by the learned Judicial Magistrate No.III, Tiruchirappalli in Cr.M.P.No.5669 of 2015 dated 12.09.2015 and the bail application filed in the first adverse case was dismissed by the learned Judicial Magistrate No.VI, Tiruchirappalli, vide Cr.M.P.No.4058 of 2015, on 28.08.2015 and that thereafter, no bail application was filed in all the adverse cases. 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 bail applications, 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 Sessions Court in CrI.M.P.(MD)No.4654 of 2014, on 23.12.2014. 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 22.09.2015, made in Cr.M.P.No.30/2015, by the second respondent / the District Collector and District Magistrate, Tiruchirappalli District, Tiruchirappalli and directs the release of the detenu by name Prabakaran S/o.Kumar, aged about 28 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-
Assistant Registrar

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

To

1.The Secretary to Government,
<https://hcservices.ecourts.gov.in/hcservices/>
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-600 009.



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

3. The Joint Secretary, Government of Tamil Nadu,
Public (Law & order) Department, Fort St. George, Chennai 600 009.

4. The Superintendent of Prison, Central Prison, Tiruchirappalli.

5. The Director General of Police (L & O), Chennai.

6. The Commissioner of Police, Tiruchirappalli.

7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

TS/18.01.2016/4P-8C/ AAL-MPA/SAR- II

H.C.P. (MD) No. 1655 of 2015

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