



WEB COPY

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.1671 of 2015

Alert alias Arumugam

.. Petitioner

Vs.

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

2.The District Collector and District Magistrate
O/o.District Collector and District Magistrate
Thanjavur District, Thanjavur.

3.The Superintendent of Central Prison,
Central Prison, Tiruchirapalli.

.. Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to call for the entire records in detention order passed in P.D.No.40/2015 dated 17.07.2015 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner namely Alert alias Arumugam S/o. Shanmugam, male aged 35 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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 P.D.No.40/2015, dated 17.07.2015, 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.454 of 2015 on the file of Pattukottai Town Police Station registered for offences punishable under Sections 294(b), 452, 336, 506(ii), 392 and 397 of the Indian Penal Code r/w Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and the following three adverse cases:-



(i) Crime No.471 of 2014 registered on the file of Pattukottai Town Police Station for offences punishable under Sections 174 Cr.P.C., altered into Sections 143, 364, 302 of the Indian Penal Code altered into Sections 147, 364, 342, 302 and 506(ii) of the Indian Penal Code r/w Section 149 of the Indian Penal Code;

(ii) Crime No.447 of 2015 registered on the file of Pattukottai Town Police Station for offences punishable under Sections 294(b), 324 and 307 of the Indian Penal Code; and

(iii) Crime No.194 of 2015 registered on the file of Pattukottai Town Police Station for offences punishable under Sections 341, 294(b) and 387 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, 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 bail applications filed in the ground case were dismissed and no further bail application was filed, but still the detaining authority expressed subjective satisfaction that there was a real possibility of the detenu coming out on bail in the ground case relying on the bail order passed in another case and that the same will be termed *ipse dixit* not supported by cogent materials.

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 the bail applications filed by the detenu were dismissed and 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 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.

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.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:

WEB COPY

"Thirumathi.Shanmugam, Father of the accused Thiru. Alert alias Arumugam is taking action to take out his son Thiru. Alert alias Arumugam on bail by filing another bail application for Ground the case registered in 1) Pattukkottai Town Police Station Crime Number.454/2015, under sections 294(b), 452, 336, 506(ii), 392 and 397 of Indian Penal Code read with section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and by filing separate bail application for the two adverse cases registered in (2) Pattukkottai Town Police Station Crime Number.447/2015, under Sections 294(b), 324 and 307 of Indian Penal Code and (3) Pattukkottai Taluk Police Station Crime Number.194/2015, under Sections 341, 294(b) and 387 of Indian Penal Code before the appropriate Court. Moreover, in a similar case, identical to the Ground case (Pattukkottai Town Police Station Crime Number.454/2015) registered in Pandanallur Police Station Crime Number.115/2015, under Sections 341, 294(b), 336, 392 and 506(ii) of Indian Penal Code read with Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, bail was granted to the accused by the Principal District and Sessions Court, Thanjavur in Criminal Miscellaneous petition Number.2978/2015, Dated: 24.06.2015. Likewise, in a similar case identical to the Adverse case (Pattukkottai Taluk Police Station Crime Number.447/2015) registered in Pattukkottai Town Police Station Crime Number.196/2013, under Sections 294(b), 324 and 307 of Indian Penal Code, bail was granted to the accused by the Principal District and Sessions Court, Thanjavur vide Criminal Miscellaneous Petition Number.2285/2013, Dated: 13.06.2013. Likewise, in a similar case identical to the Adverse case (Pattukkottai Taluk Police Station Crime No.194/2015) registered in Kumbakonam Taluk Police Station Crime No.149/2013, under Sections 341, 294(b), 386, 307 and 506(ii) of Indian Penal Code, accused Ponraj was granted bail by the Principal District and Sessions Court, Thanjavur vide Criminal Miscellaneous Petition Number.1716/2013, Dated: 30-04-2013. I am also aware that in such cases, bails are granted by the Court after lapse of some time. Hence, there is a real possibility of his (Thiru. Alert alias Arumugam) coming out on bail by filing Bail petitions for the above said three cases before the appropriate court. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of Public Order."

8. The Detaining Authority referred to the fact that the bail applications filed in the ground case were dismissed by the learned Judicial Magistrate, Pattukkottai, vide CR.M.P.No.3738 of 2015, on 29.06.2015 and by the Principal District and Sessions Court, Thanjavur, vide CR.M.P.Nos.2373 and 2487 of 2015, on 02.07.2015 and 09.07.2015 respectively and that thereafter, no bail application was filed in the ground case, namely, Crime No.454/2015 registered on the file of Pattukkottai Town 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 Principal District and Sessions Court, Thanjavur in Cr.M.P.No.1716 of 2013, on 30.04.2013. 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.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 17.07.2015, made in P.D.No.40/2015, passed by the second respondent, District Collector and District Magistrate, Thanjavur District, Thanjavur and directs the release of the detenu, by name Alert alias Arumugam S/o. Shanmugam, aged 35 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar

//True Copy//

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

To

- 1.The 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
O/o.District Collector and District Magistrate
Thanjavur District, Thanjavur.
 - 3 The Joint Secretary, Government of Tamil Nadu,
Public (Law & order) Department, Fort St. George, Chennai 600 009.
 - 4.The Superintendent of Central Prison, Central Prison, Tiruchirapalli.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1cc to M/S.K.A.S.Prabhu, Advocate in SR.No.482.