



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2016

CORAM

WEB COPY

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

H.C.P. (MD) No.1672 of 2015

Naina Mohamed

.. Petitioner

Vs.

1.The 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.the District Collector and District Magistrate,
Thanjavur District,
Thanjavur.

3.The Superintendent of Central Prison,
Central Prison,
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 P.D.No.39/2015, dated 17.07.2015, set aside the same and direct the respondents to produce the petitioner viz., Naina Mohamed S/o.Shagul Hameed @ Panneerselvam, aged about 40 years, who is detained at Central Prison, Tiruchirappalli before this Court and set him at liberty forthwith.

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

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 detenu. The detenu was detained by the second respondent by his Detention Order in P.D.No.39/2015 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 Pattukkottai Town Police Station registered for offences punishable under Sections 294(b), 452, 336, 506(ii), 392 and 397 of the Indian Penal Code read with Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and the following three adverse cases:-



(i) Crime No.57 of 2014 registered on the file of Adirampattinam Police Station for offences punishable under Sections 394 of the Indian Penal Code @ 394 and 511 of the Indian Penal Code;

(ii) Crime No.71 of 2014 registered on the file of Adirampattinam Police Station for an offence punishable under Section 392 of the Indian Penal Code; and

(iii) Crime No.200 of 2015 registered on the file of Pattukkottai Taluk Police Station for offence punishable under Sections 294(b) and 506(ii) of the Indian Penal Code and Section 8(c) r/w Section 20(ii), (b), (c) of NDPS Act.

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 ground case as well as in the third adverse case, 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 detaining authority referred to different bail orders in different cases against different persons, when no bail application was pending both in the ground case and in the third adverse case as on the date of the order of detention in the ground case. 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 submissions 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 ground case, the detaining authority made the following observation:

"5)Thirumathi.Annaponnu, wife of the accused Thiru.Naina Mohamed is taking action to take out her husband Thiru.Naina Mohamed on bail by filing another bail application for the Ground case registered in (1) Pattukkottai Town Police Station Crime No.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 a bail application for the adverse case registered in Pattukkottai Taluk Police Station Crime Number 200 / 2015, under Sections 294(b) and 506(ii) of Indian Penal Code and Section 8(c) read with Section 20(ii)(b)(c) NDPS Act 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. 2078/2015, dated 24.06.2015. Likewise, in a similar case identical to the Adverse case (Pattukkottai Taluk Police Station Crime Number 200/2015) registered in Pattukkottai Taluk Police Station Crime Number 70/2015, under Sections 294(b) and 506(ii) of Indian Penal Code read with Section 20(i), (b) of NDPS Act, bail was granted to the accused James by the Honourable High Court of Madras, Madurai Bench, Madurai vide Criminal original Petition (MD) Number 7194/2015, dated 17.04.2015. 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.Naina Mohamed) coming out on bail by filing Bail petitions from the above said two cases before the appropriate Court.

6.It is an admitted fact that no bail application was filed by the detenu both in the ground case and in the third adverse case, and the same was also taken note of by the detaining authority. When no bail application is pending, the detaining authority can refer to the bail granted to a co-accused in the same case to express the subjective satisfaction of the real possibility of the detenu coming out on bail. Only in case a bail application is pending, the detaining authority can refer to a similar case in which bail was granted to the accused therein, in support of his subjective satisfaction regarding the real possibility of the detenu coming out on bail. It has been held so by this Court in H.C.P(MD).No.1567 of 2015 dated 14.12.2015 [Sri Devi Vs. State of Tamil Nadu and others], following the judgment 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, which position was clarified by a Division Bench of the Hon'ble Supreme Court consisting of two Hon'ble Judges in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181.

7.Hence, we come to the conclusion that the subjective satisfaction expressed by the detaining authority regarding the real possibility of the detenu coming out on bail in the ground case to justify the clamping of the order of detention, while the detenu was in custody as a remand prisoner, can be termed "ipse dixit" not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.



8. 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.39/2015, by the second respondent / the District Collector and District Magistrate, Thanjavur District, Thanjavur and directs the release of the detenu by name Naina Mohamed S/o.Shagul Hameed @ Panneerselvam, aged about 40 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The District Collector and District Magistrate,
O/o.the District Collector and District Magistrate,
Thanjavur District,
Thanjavur.
- 3.The Superintendent of Central Prison,
Central Prison,
Tiruchirappalli.
- 4.The Joint Secretary to Government, Public (Law & Order)
Fort Saint George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

sm:sks-rr:22.01.2016:4P/6c

H.C.P. (MD) No.1672 of 2015
06.01.2016