



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.1678 of 2015

Shanthi

..Petitioner

Vs.

1.The District Collector and District Magistrate,  
Dindigul District, Dindigul.

2.The Government of Tamil Nadu,  
rep.by its Secretary to Government(Home)  
Prohibition and Excise (XIV)  
Fort St.George,  
Chennai - 600 009.

..Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for records pertaining to the order of the first respondent dated 11.11.2015 made in Detention order No.76/2015 and set aside the order of detention and set at liberty the detenu Manoj S/o.Thavachandran aged about 24 years, now detained in the Central Prison, Madurai.

|                 |                                              |
|-----------------|----------------------------------------------|
| For Petitioner  | : Mr.K.Prabhu<br>for M/s.S.Balaji            |
| For Respondents | : Mr.A.Ramar<br>Additional Public Prosecutor |

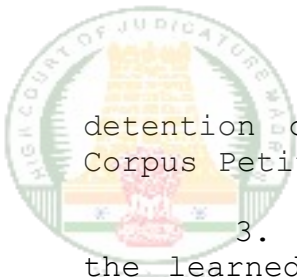
O R D E R

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

The petitioner is the mother of the detenu. The detenu has been detained by the first respondent by his order in Detention Order No.76/2015, dated 11.11.2015, 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.126 of 2015 registered on the file of Vilampatty Police Station for offences punishable under Sections 392 @ 302 and 392 of the Indian Penal Code and the following two adverse cases:-

"(i)Crime No.115 of 2013 registered on the file of Vilampatty Police Station for an offence punishable under Section 380 of the Indian Penal Code; and  
(ii)Crime No.73 of 2015 registered on the file of Vilampatty Police Station for offences punishable under Sections 457 and 380 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 in the prison 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 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*.

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 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 *H.C.P. (MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu 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:

"I am aware that Manoj is in remand in District Jail, Dindigul in connection with Vilampatty Police Station Cr.No.126/2015 under Sections 392 @ 302 and 392 IPC. In connection with 1)Vilampatty Police Station Cr.No.115/2013 under Section 380 IPC, the accused Manoj filed bail petition before the Court of Judicial Magistrate, Nilakottai vide Cr.M.P.No.13185/2013 and bail was granted on 26.11.2013. 2) In connection with Vilampatty Police Station Cr.No.73/2015 under Sections 457 and 380 IPC, the accused Manoj filed bail petition before the Court of Judicial Magistrate, Nilakottai vide Cr.M.P.No.5642/2015 and bail petition was dismissed on 08.06.2015. Again he was produced a bail petition before the Court of Judicial Magistrate, Nilakottai vide Cr.M.P.No.5983/2015 and bail was granted on 15.06.2015. In a similar case i.e. Dindigul Town South Police Station Cr.No.176/2015 under Sections 147, 148, 341, 342 and 302 IPC bail was granted by the Court of Principal District and Sessions Court, Dindigul, vide Cr.M.P.No.2035/2015. Hence, I infer there is a real possibility of his (Manoj) coming out on bail by filing bail application before higher Court for the case for which bail was not granted."



8. The Detaining Authority referred to the fact that no bail application was filed in the ground case, namely, Crime No.126 of 2015 registered on the file of Vilampatty 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 Principal District and Sessions Judge, Dindigul. 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 followed by this Court in H.C.P. (MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu 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 11.11.2015, made in Detention Order No.76/2015, by the first respondent, the District Magistrate and District Collector, Dindigul District, Dindigul and directs the release of the detenu by name Manoj S/o.Thavachandran aged about 24 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar(CS)

To

1.The Secretary to Government, Government of Tamil Nadu,  
Prohibition and Excise (XIV)  
Fort St.George, Chennai - 600 009.

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

3.The Joint Secretary to Govt.,  
Public (Law & Order) Dept.,  
Fort St.George, Chennai-9.

4.The Superintendent, Central Prison, Madurai.

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

+1cc to Mr.S.Balaji, Advocate in SR.264

H.C.P (MD) No.1678 of 2015

04.01.2016