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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P. (MD) No.1690 of 2015

Suganya

: Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai-600 009.

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

3.The Superintendent of Police,
Madurai District, Madurai.

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

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus to call for the records of the impugned detention order of the second respondent vide his proceedings in C.M.P.No.23 of 2015, dated 18.11.2015 and quash the same and set the detenu, namely Rajavel S/o.Muthusamy, aged about 30 years, now detained in Central Prison, Madurai, at liberty.

For Petitioner : Mr.S.Muniyandi

For Respondents : Mr.A.Ramar,

Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu - Rajavel S/o.Muthusamy, aged about 30 years. He has been detained by the second respondent by his order No.C.M.P.No.23 of 2015, dated 18.11.2015, 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.335 of 2015 on the file of Perungudi Police Station registered for alleged offences punishable under Sections 452, 294 (b), 324 and 307 of the Indian Penal Code and the following three adverse cases:-

<https://hcservices.ecourts.gov.in/hcservices/> No.27 of 2014 registered on the file of Perungudi Police Station for offences punishable under Sections 147, 148, 294(b) and 506(ii) of the Indian Penal Code;



(ii). Crime No.328 of 2015 registered on the file of Perungudi Police Station for offences punishable under Sections 147, 148, 324 and 307 of the Indian Penal Code; and

(iii). Crime No.334 of 2015 registered on the file of Perungudi Police Station for offences punishable under Sections 147, 148, 294 (b), 397 and 506(ii) of the Indian Penal Code and Section 4 of TNPWH 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 public peace 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 detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that bail application filed in the ground case was 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 as *ipse dixit*, not supported by cogent materials.

4. In elaboration of the said contention, the learned counsel for the petitioner submits that the bail application filed by the detenu was dismissed by the learned Principal District Sessions Judge, Madurai, vide Cr.MP.No.7274 of 2014, on 05.11.2015 and no bail application was filed, but the Detaining Authority expressed subjective satisfaction based on a bail order granted in favour of the petitioner in respect of another case [second adverse case]. The learned counsel for the petitioner further submits that both the cases are not comparable insofar as the ground case was registered for offences punishable under Sections 452, 294(b), 324 and 307 of the Indian Penal Code, whereas the second adverse case was registered for offences punishable under Sections 147, 148, 324 and 307 of the Indian Penal Code. Hence, on the ground of improper comparison also, the subjective satisfaction is vitiated.

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. The learned Additional Public Prosecutor submits that the dictum laid down in **Rekha's** case shall stand attracted only if a bail order granted in favour of any other person in any other case is made the basis of the subjective satisfaction and in case a bail order granted to the detenu himself in some other case is made the basis of the subjective satisfaction, the same cannot be said to be vitiated.

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 Rajavel has been remanded to judicial custody by Judicial Magistrate Court No.6 in connection with the case in Cr.No.335/2015 of Perungudi Police Station and he is a remand prisoner and lodged in Central Prison, Madurai. I am aware that in this case, Rajavel has filed a bail petition before the Principal District Sessions Court, Madurai, vide in Cr.MP.No.7272 of 2015 and the same was dismissed by the above Court on 05.11.2015. In a similar case registered in Madurai District, Perungudi Police Station in Cr.No.328/2015, u/s 147, 148, 324, 307 IPC, anticipatory bail was granted to the above accused Rajavel, S/o.Muthuchamy by the Hon'ble Madras High Court, Madurai Bench vide CrI.OP(MD).No.18816 of 2015 on 14.10.2015. Hence, I infer that there is real possibility of his coming out on bail by filing another bail petition, since in similar cases bails are granted by the concerned Court or Higher Courts".

8. The Detaining Authority referred to the fact that the bail application filed in the ground case was dismissed by the learned Principal District Sessions Judge, Madurai, vide Cr.MP.No.7274 of 2014, on 05.11.2015 and that thereafter, no bail application was filed in the ground case, namely, Crime No.335/2015 registered on the file of Perungudi 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, [the second adverse case] the detenu was granted anticipatory bail by the Madurai Bench of Madras High Court, vide CrI.OP[MD].No.18816 of 2015, on 14.10.2015. 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 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**. We are unable to accept the above said contention of the learned Additional Public Prosecutor. What the Judgment of the Larger Bench of the Hon'ble Supreme Court contemplates is release of a co-accused in the very same case and not grant of bail to the detenu himself in any other case. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is vitiated on the said ground alone.

9. Even while making the bail order granted to the detenu in the second adverse case as the basis for the subjective satisfaction of the detaining authority regarding the real possibility of the detenu coming out on bail in the ground case, the detaining authority failed to note the differences between the two cases. The ground case was registered for offences under Sections 452, 294(b), 324 and 307 IPC. The second adverse case was registered for offences under Sections 147, 148, 324 and 307 IPC. The penal provision found in the ground case viz., Section 452 IPC is not found in the second adverse case. Similarly, sections 147 and 148 IPC found in the second adverse case are not found in the ground case. Hence, as rightly contended by the learned counsel for the petitioner, there is improper comparison making the subjective satisfaction of the detaining authority regarding the real possibility of the detenu coming out on bail *ipse dixit* not supported by cogent materials, besides there being non application of mind on the part of the detaining authority to the above said differences between the ground case and the second adverse case. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is vitiated on this ground also.

10. For the foregoing reasons, this Court holds that the order of detention is vitiated on both the grounds and the same is liable to be set aside.

11. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 18.11.2015, made in C.M.P.No.23/2015, passed by the second respondent, the District Collector and District Magistrate, Madurai District and directs the release of the detenu, by name Rajavel, aged about 30 years, S/o.Muthusamy forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(W)

/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,
Madurai District, Madurai.

3.The Superintendent of Police,
Madurai District, Madurai.

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

5. The Joint Secretary to Government,
Public (Law and Order), Fort St.George, Chennai -9.

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

+2cc to Mr.V.Ramalingam, Advocate Sr.No.2203

akm/25.01.2016/ 5p- 9c/GSV/AN

Order made in
H.C.P. (MD) No.1690 of 2015
Dated: **12.01.2016**