



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P.(MD)No.1692 of 2015

Sekar

: Petitioner

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

: 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 entire records, connected with the detention order of the second respondent in M.H.S.Confdl.No.129 of 2015, dated 21.11.2015 and quash the same and direct the respondents to produce the body or person of the detenu namely Sekar, S/o., Ilayaraja, aged about 29 years, detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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 has been detained by the second respondent by his order in M.H.S.Confdl.No.129 of 2015, dated 21.11.2015, 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.385 of 2015 on the file of Manur Police Station registered for alleged offences punishable under Sections 341 and 302 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 the ground that 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.

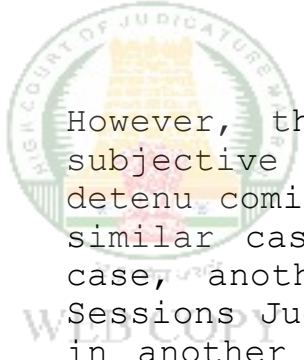
5. In support of his contention, the learned counsel for the petitioner relies on the Judgment of a Larger Bench of the Hon'ble Supreme Court consisting of three Hon'ble Judges in *Rekha Vs. State of Tamil Nadu*, reported in (2011) 5 SCC 244, followed by and clarified in *Huidrom Konungjao Singh Vs. State of Manipur and others* reported in (2012) 7 SCC 181, which has also been followed by this Court in 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:

"I am also aware that the sponsoring police officer has stated that Thirumathi.Perumalthai mother of Thiru.Sekar is taking action to take out her husband on bail by filing a bail application for Manur Police Station Crime Number 385/2015. I am aware that Thiru.Sekar is in remand in Manur Police Station Crime Number 385/2015 and in this case he has not filed any bail application so far. I am also aware that there is real possibility of his coming out on bail in future by filing bail application for the above cases since in similar cases bails are granted by the appropriate courts. I am also aware that in a similar case bail has been granted to Murugan alias Jeyasurya in CRMP No: 2918/2014 dated 27.06.2014 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of his (Thiru.Sekar) coming out on bail in Manur Police Station Crime Number 385/2015; since bails are granted by the appropriate courts in such cases."

<https://hcservices.ecourts.gov.in/hcservices/Details> Detaining Authority referred to the fact that no bail application was filed in the ground case, namely, Crime No.385/2015 registered on the file of Manur 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 Sessions Judge, Tirunelveli. 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 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 21.11.2015, made in M.H.S.Confdl.No.129 of 2015, passed by the second respondent, the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu, by name Sekar, aged about 29 years, S/o.Ilayarraja forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise (IX) Department,
Secretariat, Chennai-600 009.
 - 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
 - 3.The Superintendent of Prison,
Palayamkottai Central Prison, Tirunelveli District.
 - 4.The Joint Secretary to Government,
Public(Law and Order), Fort Saint George, Chennai-9
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +One cc to Mr.R.Alagumani , Advocate, SR.No.851

NB

RL/7C/NGM/SS/20/1/2016

Order made in
H.C.P. (MD) No.1692 of 2015

Dated:

05.01.2016