



WEB COPY

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.1697 of 2015

Vivekanandan : 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,
Office of the District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
 - 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 issuance of a Writ of Habeas Corpus to call for the entire records, connected with the detention order of the second respondent in H.S.(M).Confdl.No.72 of 2015, dated 13.11.2015 and quash the same and direct the respondents to produce the detenu namely Vivekanandan, S/o.Sankara Narayanan, aged about 27 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 was detained by the second respondent by his order No.H.S.(M).Confdl.No.72 of 2015, dated 13.11.2015, 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.336 of 2015 on the file of Authoor Police Station registered for alleged offences punishable under Sections 294(b), 387, 307 and 506(ii) of the Indian Penal Code and the following two adverse cases:-

(i). Crime No.220 of 2013 registered on the file of Authoor Police Station for offences punishable under Sections 294(b), 323 and 506(ii) of the Indian Penal Code; and

(ii). Crime No.239 of 2013 registered on the file of Authoor Police Station for offences punishable under Sections, 341, 302 IPC altered into 147, 148, 341, 302 & 120(B) IPC altered into 341, 302 r/w 34 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 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 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 *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 application filed by the detenu was 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.7 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 the accused Vivekanandan has been remanded to judicial custody on 17.09.2015 by the Judicial Magistrate, Tiruchendur till 30.09.15 in the ground case Cr.No.336/15. He is a remand prisoner lodged in the Sub Jail, Tiruchendur. Further his remand period extended till 15.10.2015 then extended till 29.10.2015, then extended till 05.11.2015, and then extended till 19.11.2015. He has filed bail application in the ground case Cr.No. 336/15 before



the Principal Sessions Court, Thoothukudi in Cr.M.P.No.3190/15 on 10.10.2015 and the same was dismissed by the same court on 19.10.2015. Further the accused Vivekanandan may file another bail petition before the appropriate Court for coming out. In a similar case registered in Sathankulam P.S Cr.No.407/2015 U/s 294(b), 387, 307, 506(fi) IPC bail was granted to the accused Dinesh Kumar @ Pulsar Dinesh by the Principal Sessions Court, Thoothukudi in Cr.M.P No. 2657/2015 on 08.09.2015 . Hence it is very likely of his coming out on bail in the above cases since bails are granted by Courts in such cases".

8. The Detaining Authority referred to the fact that the bail application filed in the ground case was dismissed by the learned Principal Sessions Judge, Thoothukudi, vide CR.MP.No.3190 of 2015, on 10.10.2015 and that thereafter, no bail application was filed in the ground case, namely, Crime No.336/2015 registered on the file of Authoor 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, Thoothukudi. 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 13.11.2015, made in H.S. (M).Confdl.No.72 of 2015, passed by the second respondent, the District Collector and District Magistrate and directs the release of the detenu, by name Vivekanandan, aged about 27 years, S/o.Sankara Narayanan forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(CS II)

/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,
Office of the District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
- 3.The Joint Secretary to Government,
Public (Law & Order) Department,
Fort St. George, Chennai-9.
- 4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Alagumani, Advocate SR.No.852

Order made in
H.C.P. (MD) No.1697 of 2015

Dated:
05.01.2016

NB
NS/NGM-SS/25.01.2016 : 4P/7C