



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2016

CORAM:

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

H.C.P (MD) No.1706 of 2015

Latha

.. Petitioner

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai - 600 009.
2. The District Magistrate and District Collector,
Dindigul District, Dindigul.
3. The Superintendent of Police,
Dindigul District, Dindigul.
4. The Superintendent of Central Prison - II,
Puzhal, Chennai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to call for the records of impugned detention order of the second respondent vide his proceedings in Detention Order No. 65/2015 dated 09.08.2015 and quash the same and set the detenu namely Deepan @ Thalaivetti Iniyavan @ Jesudasan S/o.Sivalingam aged about 33 years now detained in the Central Prison-II Puzhal, Chennai at liberty.

For Petitioner : Mr.S.Muniyandi

For Respondents : Mr.A.Ramar

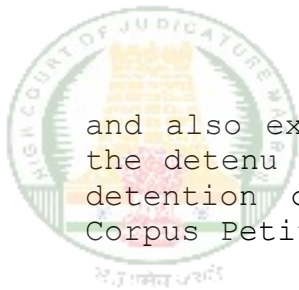
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu. The detenu was detained by the second respondent by his order in Detention Order No.65/2015 dated 09.08.2015, 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.180 of 2015 on the file of Kallimandayam Police Station registered for offences punishable under Sections 294(b) and 307 of the Indian Penal Code and under Section 25(1)(B) of Indian Arms 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, 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 relies on the contention that the subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case shows non-application of mind on the part of the Detaining Authority and it can be even termed as *ipse dixit*. The bail order granted in another case in respect of another person came to be taken note of in support of the subjective satisfaction of the Detaining Authority when no bail application was pending in the ground case. Such a comparison is against the dictum of the Supreme Court in **Rekha Vs. State of Tamil Nadu and others** reported in (2011) 5 SCC 244, further explained by another Division Bench of the Hon'ble Supreme Court in **Hudirom 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.

4. 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.

5. The question of propriety of referring to bail orders in another case when no bail petition is pending on the date of passing of the order of the detention, was considered by 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 which was further clarified by another Bench of the Hon'ble Supreme Court consisting of two Hon'ble Judges in **Hudirom Konungjao Singh Vs. State of Manipur and others** reported in (2012) 7 SCC 181. The same was also followed by this Bench 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. A dictum has been laid down therein that in case bail application is not pending, reference to the bail order in any other case to support the subjective satisfaction will not be proper and exception to the same shall be a reference to an order of bail granted to a co-accused in the very same case. Only in case, a bail application is pending then the Detaining Authority may refer to a bail order granted in favour of an accused in another case provided such other case is also comparable.

7. Since in this case no bail application in respect of the ground case was pending on the date of passing of the order of detention, the reliance on the order of bail passed in Crime No.10 of 2012 as the similar case particulars to support subjective satisfaction of the Detaining Authority in respect of the real possibility of the detenu coming out on bail in the ground case is one not supported by cogent materials and the same shall be termed *ipse dixit*. On that score only, the 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 09.08.2015, made in Detention Order No.65/2015 by the second respondent, the District Magistrate and District Collector, Dindigul District, Dindigul and directs the release of the detenu by name Deepan @ Thalaivetti Iniyavan @ Jesudasan S/o.Sivalingam aged about 33 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-
Assistant Registrar (AS)

/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 Magistrate and District Collector,
Dindigul District, Dindigul.
3. The Superintendent of Police,
Dindigul District, Dindigul.
4. The Superintendent of Central Prison - II,
Puzhal, Chennai.
(In Duplicate for Communication to Detenu)
5. The Joint Secretary to Government,
Public (Law & Order),
Fort St. George, Chennai-9.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
7. The Commissioner of Police,
Madurai District.

MJ
TE/SKS-RR/ : 19/01/2016 : 3P/9C

H.C.P (MD) No.1706 of 2015
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