



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2016

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

H.C.P.(MD)No.1714 of 2015

A.Veni

.. Petitioner

Vs

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Commissioner of Police Office,
Tirunelveli City.

3.The Inspector of Police,
Melapalayam Police Station,
Tirunelveli District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the Respondent No.2 in No.77/BCDFGISSSV/2015 dated 25.11.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name R.Ananth @ Anantharaj S/o.Rathinam Thevar, aged about 38 years, now detained at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.S.Sundara Pandian

For Respondents : Mr.A.Ramar,
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.R.SHIVAKUMAR, J.)

The petitioner is the wife of the detenu viz., R.Ananth @ Anantharaj S/o.Rathinam Thevar. The detenu was detained by the second respondent by his Detention Order in No.77/BCDFGISSSV/2015 dated 25.11.2015, 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.502 of 2015 on the file of Melapalayam Police Station registered for offences punishable under Sections 341, 294(b), 387, 307 and 506(ii) of the Indian Penal Code and the following three adverse cases:-



(i) Crime No.146 of 2015 registered on the file of Devarkulam Police Station for alleged offences punishable under Sections 341, 294(b), 387 and 506(ii) of the Indian Penal Code;

(ii) Crime No.144 of 2015 registered on the file of Sivanthipatti Police Station for offences punishable under Sections 294(b), 387 and 506(ii) of the Indian Penal Code; and

(iii) Crime No.400 of 2015 registered on the file of Manur Police Station for alleged offences punishable under Sections 341, 294(b), 307 and 506(ii) 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 first and second adverse cases, 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 following contention:

"The detaining authority referred to the remand of the detenu in the first adverse case viz., Crime No.146 of 2015 registered for offences under Sections 341, 294(b), 387 and 506(ii) IPC on the file of Devarkulam Police Station and in the second adverse case viz., Crime No.144 of 2015 registered for offences under Sections 294(b), 387 and 506(ii) IPC on the file of Sivanthipatti Police Station and expressed a subjective satisfaction that there was real possibility of the detenu coming out on bail in those two cases by filing applications for bail before the appropriate Court, which observation indicates that no bail application was pending in those cases as on the date of passing of the order of detention. The grant of bail to the detenu in the third adverse case viz., Crime No.400 of 2015 on the file of Manur Police Station and the ground case viz., Crime No.502 of 2015 on the file of Melapalayam Police Station, seems to have been cited as the ground on which the detaining authority inferred the real possibility of the detenu coming out on bail in the first and second adverse cases and that the same shall be against the dictum laid down by the Supreme Court consisting of three Hon'ble Judges in **Rekha Vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244** and also the judgment of this Court in **H.C.P(MD).No.1567 of 2015** dated 14.12.2015 [**Sri Devi Vs. State of Tamil Nadu and others**]."

4.We heard the submissions made by the learned Additional Public Prosecutor on the above said submission made on behalf of the petitioner, and the submissions made by the learned Additional Public Prosecutor are also taken into consideration.

5.Regarding the subjective satisfaction of the detaining authority as to the real possibility of the detenu coming out on bail in the first and second adverse cases, the detaining authority made the following observation:

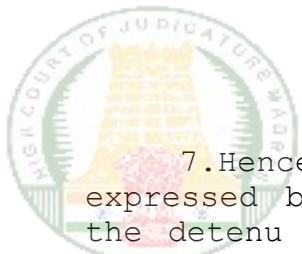
<https://hcservices.ecourts.gov.in/hcservices/>

"I am aware that Thiru.R.Ananth alias Anantharaj who was remanded upto 27.11.2015 in connection with the case



in Manur Police Station Crime Number 400/2015 under Sections 341, 294(b), 307, 506(ii) Indian penal Code read with 25(1-A) of Arms Act, was formally arrested at Central prison, Palayamkottai on 17.11.2015 in connection with the case in Melapalayam Police Station Crime Number 502/2015 under Section 41, 294(b), 387, 307, 506(ii) Indian Penal Code, produced before the Judicial Magistrate No.V, Tirunelveli on 18.11.2015 and remanded upto 02.12.2015 at Central Prison, Palayamkottai. He was formally arrested at Central Prison, Palayamkottai on 17.11.2015 in connection with the case in Devarkulam Police Station Crime Number 146/2015 under Section 341, 294(b), 387, 506 (ii) Indian Penal Code, produced before the Judicial Magistrate No.III, Tirunelveli on 18.11.2015 and remanded upto 02.12.2015. He was formally arrested at Central Prison, Palayamkottai on 18.11.2015 in connection with the case in Sivanthipatti Police Station Crime Number 144/2015 under Section 294(b), 387, 506(ii) Indian Penal Code, produced before the Judicial Magistrate No.III, Tirunelveli on 19.11.2015 and remanded upto 03.12.2015. I am aware that he is in remand in connection with the cases in Manur Police Station Crime Number 400/2015, Sivanthipatti Police Station Crime Number 144/2015, Devarkulam Police Station Crime Number 146/2015 and Melapalayam Police Station Crime Number 502/2015. He moved applications for bail before the District and Sessions Judge, Tirunelveli on 18.11.2015 in Cr.M.P.No.6918/2015 in connection with the case in Manur Police Station Crime Number 400/2015 and in Cr.M.P.No.6920/2015 in connection with the case in Melapalayam Police Station Crime Number 502/2015 and he was granted bail in both the cases on 24.11.2015. There is also a real possibility of Thiru.R.Ananth alias Anantharaj's coming out on bail in other cases in Devarkulam Police Station Crime Number 146/2015 and Sivanthipatti Police Station Crime Number 144/2015 by filing applications for bail before the appropriate Court."

6.It is an admitted fact that no bail application was filed by the detenu in the first and second adverse cases and the same was also taken note of by the detaining authority. When no bail application is pending, the detaining authority could refer to a bail granted to a co-accused in the same case to express the subjective satisfaction of the real possibility of the detenu coming out on bail. Only in case a bail application is pending, the detaining authority can refer to a similar case in which bail was granted to the accused therein, in support of his subjective satisfaction regarding the real possibility of the detenu coming out on bail. It has been held so by a Division Bench of this Court in **H.C.P(MD).No.1567 of 2015** dated 14.12.2015 [**Sri Devi Vs. State of Tamil Nadu and others**], following the judgment 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 position was clarified by a Division Bench of the Hon'ble Supreme Court consisting of two Hon'ble Judges in **Huidrom Konungjao Singh Vs. State of Manipur and others** reported in **(2012) 7 SCC 181**.



7.Hence, we come to the conclusion that the subjective satisfaction expressed by the detaining authority regarding the real possibility of the detenu coming out on bail in the first and second adverse cases to justify the clamping of the order of detention, while the detenu was in custody as a remand prisoner, can be termed "*ipse dixit*" not supported by cogent materials. On that ground alone, the order of 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 25.11.2015, made in No.77/BCDFGISSSV/2015, by the second respondent / the Commissioner of Police, Tirunelveli City, Tirunelveli and directs the release of the detenu by name R.Ananth @ Anantharaj S/o.Rathinam, aged about 38 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government, State of Tamil Nadu,
Home Prohibition and Excise Department,
Fort St.George, Secretariat, Chennai-600 009.
 - 2.The Commissioner of Police, Commissioner of Police Office,
Tirunelveli City.
 - 3.The Inspector of Police, Melapalayam Police Station,
Tirunelveli District.
 - 4.The Superintendent, Central Prison, Palayamkottai.
(In duplicate for communication to detenu)
 - 5.The Joint Secretary to Government, Public (Law & Order)
Fort Saint George, Chennai-9.
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +one cc to Mr.S.Sundara Pandian, Advocate in SR.No.4679

H.C.P. (MD) No.1714 of 2015
21.01.2016

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