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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2016

CORAM

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

H.C.P. (MD) No.1719 of 2015

S.Priya

.. Petitioner

Vs.

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

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

3.The Superintendent of Prison,
Palayamkottai Central Prison,
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 relating to the detention order of the Respondent No.2 in M.H.S.Confdl.No.126/2015, dated 20.11.2015, quash the same and direct the respondents to produce the detenu by name Suresh S/o.Senthilvel, aged about 22 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Vinoth Bharathi

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., Suresh S/o.Senthilvel, aged 22 years. The detenu was detained by the second respondent by his Detention Order in M.H.S.Confdl.No.126/2015 dated 20.11.2015 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.326 of 2015 on the file of Munneerpallam Police Station registered for offences punishable under Sections 294(b), 387 and 506(ii) of the Indian Penal Code and the following adverse case:-

"Crime No.325 of 2015 registered on the file of Munneerpallam Police Station for offences punishable under Sections 392 and 307 of the Indian Penal Code read with 4 of Tamil Nadu Prohibition of Harassment of Women 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 as well as in the adverse 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 following contention:

"The detaining authority referred to a different bail order in different cases against different persons, when no bail application was pending both in the ground case and in the adverse case as on the date of the order of detention. The said comparison to express subjective satisfaction is against the dictum 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** 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 ground case and in the adverse case, the detaining authority made the following observation:

"6)I am also aware that the sponsoring Police Officer has stated that Thirumathi.Priya wife of the Thiru.Suresh is taking action to take out her husband on bail by filing a bail application for Munneerpallam Police Station Crime Number 325/2015 and Police Station Crime Number 326/2015. I am aware that Thiru.Suresh has not filed any bail application so far in Munneerpallam Police Station Crime Number 325/2015. 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 Muthukumar alias Shipakumar in CRMP No.1081/2014 dated 05.03.2014 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of his (Thiru.Suresh) coming out on bail in Munneerpallam Police Station Crime Number 325/2015; since bails are granted by the appropriate Courts in such cases. I am aware that Thiru.Suresh is in remand in Munneerpallam Police Station Crime Number 326/2015 and in this case he has not filed any bail application so far. I am also



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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 Ananth alias Anantharaj in CRMP No.5252/2014 dated 22.12.2014 by the Judicial Magistrate No.III, Tirunelveli. I therefore infer that there is real possibility of his (Thiru.Suresh) coming out on bail in Munneerpallam Police Station Crime Number 325/2015; since bails are granted by the appropriate Courts in such cases."

6.It is an admitted fact that no bail application was filed by the detenu both in the ground case and in the adverse case, and the same was also taken note of by the detaining authority. When no bail application is pending, the detaining authority can 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 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 ground case 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 20.11.2015, made in M.H.S.Confdl.No.126/2015, by the second respondent / the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu by name Suresh S/o.Senthilvel, aged about 22 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(C.O.)

/True Copy/



To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
(In Duplicate to communicate the detenu)
4. The Joint Secretary to Government,
Public (Law and Order), Fort St.George, Chennai -9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Vino Bharathi, Advocate SR.No.1323

akm/11.01.2016/4p-8c/AAL/MPA/SAR-II

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