



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2016

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR**

**AND**

**THE HONOURABLE MR.JUSTICE V.S.RAVI**

H.C.P.(MD)No.1725 of 2015

Selvi

.. Petitioner

Vs.

1.The Principal Secretary to Government,  
Home, Prohibition & Excise (IX) Department,  
State of Tamil Nadu,  
Secretariat, Chennai-600 009.

2.The District Collector and District Magistrate,  
O/o.District Collector and District Magistrate,  
Tirunelveli District, Tirunelveli.

3.The Superintendent of Central 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 relating to the detention order dated 25.11.2015 made in M.H.S.Confdl.No.130/2015 passed by the second respondent herein and quash the same and direct the respondents to produce the body or person of the petitioner's husband - Nicksan S/o.Pitchai, aged about 43 years, now detained in Central Prison, Palayamkottai 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 wife of the detenu viz., Nicksan S/o.Pitchai, aged about 43 years. The detenu has been detained by the second respondent by his order in M.H.S.Confdl.No.130/2015, 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.289 of 2015 on the file of Thisayanvilai Police Station registered for offences punishable under Sections 341, 294(b), 387, 307 and 506(ii) of the Indian Penal Code and the following two adverse cases:-

"(i)Crime No.340 of 2015 on the file of

https://hcservices.ecourts.gov.in/hcservices/ Thisayanvilai Police Station registered for an offences punishable under Section 4 of the Tamil



Nadu Property (Prevention of Damage and Loss) Act;  
and

(ii) Crime No.95 of 2015 on the file of Uvari Police Station registered for offences punishable under Sections 294(b), 387 and 506(ii) of the Indian Penal Code."

WEB COPY

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 and in the adverse cases, 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 mainly relies on the following contention:-

"Though the detaining authority was justified in relying on bail applications filed and allowed in other cases in respect of other accused persons to express subjective satisfaction of the detenu coming out on bail in the ground case and in the first adverse case, since bail applications filed in respect of the same were pending as on the date of passing of the order of detention, the reference made to a bail order in a different case in respect of a third person to express subjective satisfaction of the detaining authority regarding the real possibility of the detenu coming out on bail in the second adverse case viz., Crime No.95/2015 on the file of Uvari Police Station is not supported by cogent materials and the subjective satisfaction of the detaining authority is vitiated, because no bail application was pending in the second adverse case as on the date of passing of the order of detention."

4. 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.

5. The submissions made by the learned Additional Public Prosecutor in reply to the above said contention raised by the learned counsel for the petitioner are also heard.

6. In Paragraph No.6 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:



"5) I am aware that Thiru.Nicksan filed a bail petition before the Principal Sessions Court, Tirunelveli, in CRMP No.6924/2015 on 18.11.2015 in Thisayanvilai Police Station Crime Number 340/2014 and the bail petition is yet to be disposed. I am also aware that he is very likely to come out on bail in that case. I am also aware that in a similar case bail has been granted to Subbaiah in CRMP No.3926/2013 dated 26.08.2013 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is very likely of his (Thiru.Nicksan) coming out on bail in Thisayanvilai Police Station Crime Number 340/2014; since bails are granted by the appropriate Courts in such cases. I am also aware that the sponsoring Police Officer has stated that Thirumathi.Selvi wife of the Thiru.Nicksan is taking action to take out her husband on bail by filing a bail application for Uvari Police Station Crime Number 95/2015. I am aware that he has not filed any bail application so far in Uvari Police Station Crime Number 95/2015. 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 case bails are granted by the appropriate courts. I am also aware that in a similar case bail has been granted to Anantha alias Anantharaj in CRMP No.5252/2014 dated 22.12.2014 by the Judicial Magistrate-3, Tirunelveli. I therefore infer that there is real possibility of his (Thiru.Nicksan) coming out on bail in Uvari Police Station Crime Number 95/2015; since bails are granted by the appropriate Courts in such cases. I am aware that Thiru.Nicksan is in remand in Thisayanvilai Police Station Crime Number 289/2015 and in this case he filed a bail petition before the Principal Sessions Court, Tirunelveli, in CRMP No.6922/2015 on 18.11.2015 and the bail petition is yet to be disposed. I am also aware that he is very likely to come out on bail in that case. I am also aware that in a similar case bail has been granted to Madasamy alias Murugan alias Semba in CRMP No.5579/2013 dated 21.11.2013 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is very likely of his (Thiru.Nicksan) coming out on bail in Thisayanvilai Police Station Crime Number 289/2015; since bails are granted by the appropriate Courts in such cases."

7. The Detaining Authority referred to the fact that the bail applications filed in the ground case and in the first adverse case were pending in CR.M.P.No.6922/2014 and CR.M.P.No.6924/2014 respectively and that the file of the learned Principal Sessions Judge, Tirunelveli, from 18.11.2015 and that no bail application was filed in the second adverse case, namely, Crime No.95/2015



registered on the file of Uvari 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 in the second adverse case, since in a similar case, not being a case of a co-accused in the very same case, another person was granted bail. Such a comparison of bail order passed in another case, when no bail application is pending in the second adverse case, 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 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. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is vitiated on the said ground alone.

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 M.H.S.Confdl.No.130/2015, by the second respondent / the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu by name Nicksan S/o.Pitchai, aged about 43 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary to Government,  
Home, Prohibition & Excise (IX) Department,  
State of Tamil Nadu, Secretariat,  
Chennai-600 009.
- 2.The District Collector and District Magistrate,  
O/o.District Collector and District Magistrate,  
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Central Prison,  
Palayamkottai Central Prison, Tirunelveli District.
- 4.The Joint Secretary to Government,  
Public(Law and Order), Saint George Fort, Chennai-9
- 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

gcg

RL/6C/NGM/SS/25/1/2016

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

Order made in

H.C.P. (MD) No.1725 of 2015

Dated:

11.01.2016