



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.01.2016**

CORAM:

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

and

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

H.C.P(MD)No.1728 of 2015

Prasanth

.. Petitioner

Vs.

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

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records connected with the detention order of the second respondent in Detention Order No.162/BCDFGISSSV/2015, dated 23.11.2015 and quash the same and direct the respondents to produce the body namely Prasanth, S/o.Rajendran, aged about 22 years, detained in Madurai Central Prison, before this Court and set him at liberty forthwith.

For petitioner

: Mr.R.Alagumani

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 detenu - Prasanth, S/o.Rajendran, aged about 22 years. The detenu has been detained by the second respondent by his Detention Order No.162/BCDFGISSSV/2015, dated 23.11.2015, 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.888 of 2015 registered on the file of E2 Madhichiam Police Station for offences punishable under Sections 147, 148 and 302 of the Indian Penal Code and the same was later altered into a case for offences punishable under Sections 147, 148, 341, 392, 506(ii) and 302 r/w 34 and 397 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 order of detention is assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that the subjective satisfaction expressed by the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case is not supported by cogent materials, since the criminal case, that was cited as the similar case, in which bail was granted, was for offences punishable under Sections 147, 148 and 302 of the Indian Penal Code alone, whereas in the ground case, the detenu was alleged to have committed offences punishable under Sections 341, 506(ii) and Section 392 r/w 397 of the Indian Penal Code, in addition to offences punishable under Sections 147, 148 and 302 of the Indian Penal Code. It is the contention of the learned counsel for the petitioner that the case cited by the Detaining Authority as similar case is not in fact similar to the ground case and the comparison made by the Detaining Authority to express subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case is improper.

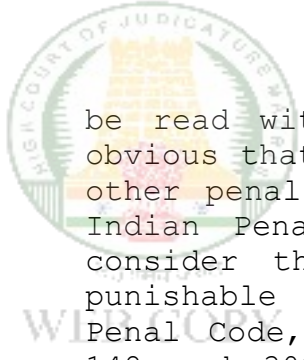
4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. In Paragraph No.4 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:-

"4. I am aware that Thiru Prasanth, S/o.Rajedran is in remand in the ground case in E2 Madhichiam PS.Cr.No.888/2015 for the offences under Sections 147, 148, 302 IPC @ 147, 148, 341, 392, 506(ii) and 302 r/w 34 and 397 IPC at the Central Prison, Madurai; and I am aware that his bail application filed in the above said ground case was dismissed by the J.M.No.II, Madurai in CrI.MP.No.5943 /2015, on 20.10.2015. I am also aware that his further bail application filed in the ground case is pending for disposal before the Principal District and Sessions Court, Madurai vide Cr.MP.No.7548/2015.

On consideration of the bail granted by the Principal Sessions Court, Madurai in CrI.MP.No.6895/2014, dated 22.09.2014 to an accused Thiru.White @ Vellaisamy, S/o.Murugesan concerned in E3 Anna Nagar P.S.Cr.No.895/2014 u/s 147, 148, 302 IPC, which is similar to the above mentioned ground case, I am of the view that there is a real possibility of his (Thiru Prasanth, S/o.Rajedran) coming out on bail in the said ground case through the pending bail application before the Court concerned, since in similar case bail was granted by the Court concerned".

6. The ground case, namely, Crime No.888 of 2015, on the file of E2 Madhichiam Police Station came to be registered initially for offences punishable under Sections 147, 148 and 302 of the Indian Penal Code, but the same was altered into a case for offences punishable under Sections 147, 148, 341, 392, 506(ii) and 302 r/w 34 and 397 of the Indian Penal Code. As per the recitals found in unnumbered sub-paragraph No.4 of Paragraph No.2 of the grounds of detention, the said recital does not state as to which of the substantive offences is to be read with Section 34 of the Indian Penal Code and which of the substantive offences is to



be read with Section 397 of the Indian Penal Code. But, it is quite obvious that Section 397 of the Indian Penal Code cannot be read with any other penal provision mentioned above other than the Section 392 of the Indian Penal Code. The Detaining Authority seems to have omitted to consider the fact that the ground case came to be made as a case punishable under Sections 341, 506(ii) and 392 r/w 397 of the Indian Penal Code, in addition to the offences punishable under Sections 147, 148 and 302 of the Indian Penal Code whereas the case taken as the similar case by the Detaining Authority is one registered for offences punishable under Sections 147, 148 and 302 of the Indian Penal Code alone, as it is seen from Paragraph No.4 of the grounds of detention. Hence, as rightly contented by the learned counsel for the petitioner, the comparison of the ground case, namely, Crime No.888 of 2015 registered on the file of E2 Madhichiam Police Station with Crime No.895/2014 registered on the file of E3 Anna Nagar Police Station to express the subjective satisfaction regarding the real possibility of the detenu coming out on bail is not proper, with the result that the subjective satisfaction expressed by the Detaining Authority becomes *ipse dixit*, not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 23.11.2015, made in No.162/BCDFGISSSV/2015, passed by the second respondent, the Commissioner of Police, Madurai City, Madurai and directs the release of the detenu, by name Prasanth, aged about 22 years, S/o.Rajendran forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To:

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

+one cc to Mr.R.Alagumani, Advocate in SR.No.5613

ORDER MADE IN
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