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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.1730 of 2015

Asaraf Ali

... Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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

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 Cr.M.P.No.24/Goonda/2015 dated 24.11.2015 and Quash the same and direct the Respondents to produce the detenu namely Asaraf Ali, S/o.Sithik 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**]

The petitioner is the detenu. He has been detained by the second respondent by his order in Cr.M.P.No.24/Goonda/2015, dated 24.11.2015, 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.333 of 2015 registered on the file of Ramanathapuram Bazaar Police Station for an offence punishable under Section 397 of the Indian Penal Code and the following five



adverse cases:

"(i) Crime No.290 of 2014 registered on the file of Ramanathapuram Bazaar Police Station for offences punishable under Sections 457 and 380 of the Indian Penal Code;

(ii) Crime No.86 of 2015 registered on the file of Ramanathapuram Bazaar Police Station for offences punishable under Sections 457 and 380 of the Indian Penal Code;

(iii) Crime No.112 of 2015 registered on the file of Ramanathapuram Bazaar Police Station for offences punishable under Sections 457 and 380 of the Indian Penal Code;

(iv) Crime No.113 of 2015 registered on the file of Ramanathapuram Bazaar Police Station for offences punishable under Sections 457, 380 and 511 of the Indian Penal Code; and

(v) Crime No.329 of 2015 registered on the file of Ramanathapuram Bazaar Police Station for an offence punishable under Section 392 of the Indian Penal Code."

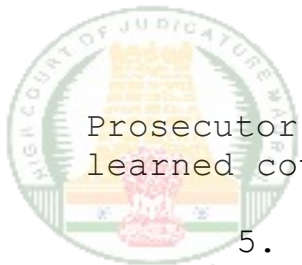
2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and also expressing subjective satisfaction that it was very likely that the detenu would come 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 a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner primarily relies on the following contention:-

"Though the Detaining Authority took note of the fact that the detenu was remanded in the ground case in Crime No.333 of 2015 registered on the file of Ramanathapuram Bazaar Police Station and also in the fifth adverse case, namely Crime No.329 of 2015 registered on the file of the very same police station, while clamping the order of detention on 24.11.2015, the Detaining Authority simply referred to the imminent possibility of the detenu coming out on bail in the ground case alone and omitted to express the subjective satisfaction with clarity as to the the real/imminent possibility of the detenu coming out on bail in the fifth adverse case. Such omission will show non-application of mind on the part of the Detaining Authority with regard to the necessity of clamping an order of detention while the detenu was in custody in the ground case."

<https://hccservices.madras.gov.in/hccservices/>

4. The submissions made by the learned Additional Public



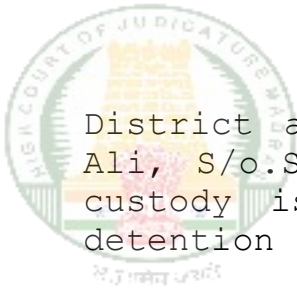
Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. The Detaining Authority, referring to the remand of the detenu in the ground case, viz., Crime No.333 of 2015 registered on the file of Ramanathapuram Bazaar Police Station, made the following observation in the grounds of detention:-

"5. I am aware that Thiru.Asaraf Ali (22/2015), S/o.Sithik, Raja Hussain Pallivasal Street, Chinnakadai, Ramanathapuram, (now at) West Street, Mandapam, Ramanathapuram District is now at Central Prison, Madurai in connection with the ground case in Ramanathapuram Bazaar P.S.Cr.No.333/2015 under Section 397 IPC. The accused Asaraf Ali did not file any bail petition in connection with ground case in Ramanathapuram Bazaar P.S.Cr.No.333/2015 in the Court,. The accused Asaraf Ali filed the bail petitions in connection with adverse cases in Ramanathapuram Bazaar P.S.Cr.Nos.290/2014, 86/2015, 112/2015 and 113/2015 in the Judicial Magistrate No.I Court, Ramanathapuram vide Cr.M.P.Nos.2290/2015, 2291/2015, 2293/2015 and 2292/2015 respectively and the bail was granted. In the ground case in Ramanathapuram Bazaar P.S.Cr.No.333/2015, the co-accused of the accused Asaraf Ali namely Prabhakaran, 23/15, S/o.Annadurai, K.K.Nagar, Ramanathapuram filed a bail petition in the Sessions Court, Ramanathapuram vide Cr.M.P.No.2723/2015 and the bail was granted on 28.10.2015. Hence, I infer that it is very likely of his (Asaraf Ali) coming out on bail in ground case since bails are granted by the Court in such cases".

6. A reading of the above extract will make it clear that the Detaining Authority considered the real possibility of the detenu coming out on bail in the ground case, but the Detaining Authority failed to advert to the real possibility of the detenu in coming out on bail in the fifth adverse case namely Crime No.329 of 2015, registered on the file of Ramanathapuram Bazaar Police Station. The failure to advert to the real possibility of the detenu coming out on bail in the fifth adverse case, in which he was in jail as a remand prisoner, vitiates the order of detention, as the order of detention does not disclose the necessity to pass such an order of detention when the detenu was in Jail as a remand prisoner. Hence, 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 ~~the order of detention is set aside~~ the order of detention dated 24.11.2015, made in Cr.M.P.No.24/Goonda/2015, by the second respondent, the District Collector and District Magistrate, Ramanathapuram



District and directs the release of the detenu by name Asaraf Ali, S/o.Sithik, aged about 22 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

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Sd/-

Assistant Registrar(T&P)

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
O/o. District Collector and District Magistrate,
Ramanathapuram District.
- 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.

CSL/SKS-RR/03.02.2016/4P/6C

H.C.P (MD) No.1730 of 2015
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