



WEB COPY

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.1732 of 2015

Sadham Hussain

.. 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,
Tirunelveli District, Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli 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 M.H.S.Confdl.No.131/2015 dated 29.11.2015 and quash the same and direct the respondents to produce the detenu namely Sadham Hussain S/o.Shahul Hameed aged about 26 years detained in palayamkottai Central Prison before this Court and set him at liberty.

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 M.H.S.Confdl.No.131/2015, dated 29.11.2015, 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.519 of 2015 registered on the file of Tenkasi Police Station for offences punishable under Sections 294



"(i)Crime No.264 of 2015 registered on the file of Achenpudur Police Station for offences punishable under Sections 294(b), 342, 332, 307 and 506(ii) of the Indian Penal Code; and

(ii)Crime No.276 of 2015 registered on the file of Elathur Police Station for 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 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 of the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case is not based on cogent materials and the same may be termed as *ipse dixit*.

4. In elaboration of the said contention, the learned counsel for the petitioner submits that the subjective satisfaction regarding the real possibility of the detenu coming out on bail in a case, wherein no bail application is pending, cannot be based on any other case in respect of other persons and that the very fact that no bail application is pending will negate the imminent possibility of the detenu coming out on bail, subject to an exception that a co-accused in the very same case placed under similar circumstances has been released on bail.

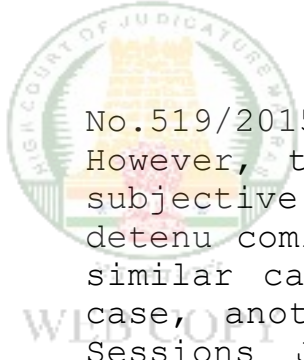
5. In support of his contention, the learned counsel for the petitioner relies on the Judgment of a Larger Bench of the Hon'ble Supreme Court consisting of three Hon'ble Judges in Rekha Vs. State of Tamil Nadu, reported in (2011) 5 SCC 244, followed by and clarified in Huidrom Konungjao Singh Vs. State of Manipur and others reported in (2012) 7 SCC 181, which has also been followed by this Court in H.C.P.(MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu and others].

6. 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.

7. 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:



" I am also aware that the .sponsoring Police officer has stated that Thirumathi. Mageshwari wife of the Thiru. Sadham Hussain is taking action to take out her husband on bail by filing a bail application for Achenpudur Police Station Crime Number 264/2015, Elathur Police Station Crime Number 276/2015 and Tenkasi Police Station Crime Number 51¹)/2015. I am aware that Thiru. Sadham Hussain has not filed any bail application so far in Achenpudur Police Station Crime Number 264/2015. 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 Iyyappan in CRMP No: 286/2013 dated 18.01.2013 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of his (Thiru. Sadham Hussain) coming out on bail in Achenpudur Police Station Crime Number 264/2015; since bails are granted by the appropriate courts in such cases. I am aware that he has not filed any bail application so far in Elathur Police Station Crime Number 276/2015. 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 Jeno in CRMP No: 5408/2015 dated 03.09.2015 by the Principal Sessions Court, Tirunelveli. I therefore infer that there is real possibility of his (Thiru. Sadham Hussain) coming out on bail in Elathur Police Station Crime Number 276/2015; since bails are granted by the appropriate courts in such cases. I am aware that Thiru. Sadham Hussain is in remand in Tenkasi Police Station Crime Number 519/2015 and in this case he has not filed any bail application so far. 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 Alexander in CRMP No: 2210/2015 dated 15.04.2015 by the Principal Sessions Court, Tirunelveli.. I therefore infer that there is real possibility of his (Thiru. Sadham Hussain) coming out on bail in Tenkasi Police Station Crime Number 519/2015; 'since bails are granted by the appropriate courts in such cases."



No.519/2015 registered on the file of Tenkasi 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, since in a similar case, not being a case of a co-accused in the very same case, another person was granted bail by the learned Principal Sessions Judge, Tirunelveli. Such a comparison of bail order passed in another case, when no bail application is pending, 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 followed by this Court in H.C.P.(MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu and others]. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is vitiated on the said ground alone.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 29.11.2015, made in No.M.H.S.Confdl.No.131/2015, by the second respondent, the District Collector and District Magistrate, Tirunelveli District and directs the release of the detenu by name Sadham Hussain S/o.Shahul Hameed aged about 26 years 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 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,
Tirunelveli District, Tirunelveli.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison, Tirunelveli District.
(In duplicate for communication to Detenu)
- 4.The Joint Secretary to Government,
Public(Law and Order)
Fort Saint George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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