



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2016

CORAM:

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

H.C.P (MD) No.1736 of 2015

Mohammed Hanifa

.. Petitioner

Vs.

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

2.The District Magistrate and District Collector,
Velunachiar Valagam, Dindigul.

3.The Inspector of Police,
Town North Police Station,
Dindigul.

.. 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 in Detention Order No.85 of 2015, dated 29.11.2015, on the file of the second respondent and quash the same as illegal and direct the respondents to produce the body and person of the petitioner's son Sheik Fareeth, S/o.Mohammed Hanifa, aged about 25 years, now confined at Central Prison, Madurai, before this Court and set him at liberty forthwith.

For petitioner
For Respondents

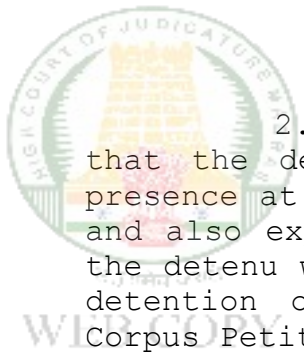
: Mr.S.M.A.Jinnah
: Mr.A.Ramar
Additional Public Prosecutor

O R D E R

[Order of the Court was made by P.R.SHIVAKUMAR, J.]

The petitioner is the father of the detenu - Sheik Fareeth, S/o.Mohammed Hanifa, aged about 25 years. The detenu has been detained by the second respondent by his order in Detention Order No.85 of 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.1309 of 2015 registered on the file of Dindigul Town North Police Station for offences punishable under Sections 147, 148, 341, 323, 506(ii), 307 of the Indian Penal Code r/w Section 3(1) of TNPPDL Act 1992 and the following one adverse case:-

(i). Crime No.820 of 2015 registered on the file of Dindigul Town South Police Station for offences punishable under Sections 147, 323 and 506(i) 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 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 ipse dixit not supported by cogent materials insofar as it does not refer to any similar case particulars.

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, in the grounds of detention, while expressing subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case made the following observations:-

"5. I am aware that Sheik Fareeth is in remand in District Jail, Dindigul in connection with Dindigul Town North Police Station Cr.No.1309 of 2015, under Sections 147, 148, 341, 323, 506(ii), 307 of the Indian Penal Code r/w Section 3(1) of TNPPDL Act 1992. 1). In connection with Dindigul Town North Police Station Cr.No.820 of 2015, u/s.147, 323, 506 (i) IPC, the accused Sheik Fareeth filed bail petition before the Court of Judicial Magistrate No.III, Dindigul, vide Cr.MP.No.5738 of 2015 and bail was granted on 24.11.2015. 2). In connection with Dindigul Town North Police Station Cr.No.1309 of 2015, under Sections 147, 148, 341, 323, 506(ii), 307 of the Indian Penal Code r/w Section 3(1) of TNPPDL Act 1992, the accused Sheik Fareeth filed bail petition before the Court of District Principal Sessions Court, Dindigul, vide Cr.MP.No.3098 of 2015 and the same was dismissed on 23.11.2015. Again, he filed bail petition before the Hon'ble Madurai Bench of Madras High Court, Madurai vide CrI.OP[MD]. No.22410 of 2015 and the same is pending. Hence, I infer that there is a real possibility of his [Sheik Fareeth] coming out on bail by filing bail application before higher Court for the case for which bail was not granted".

6. The above said observation, as rightly contended by the learned counsel for the petitioner, shows the pre-determination of mind on the part of the Detaining Authority that the bail petition filed before the High Court will be allowed in any event without even making any reference to the similar case in which bail came to be granted. On that score 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 29.11.2015, made in Detention Order No.85/2015, passed by the second respondent, the District Magistrate and District Collector, Dindigul and directs the release of the detenu, by name Sheik Fareeth, aged about 25 years, S/o.Mohammed Hanifa forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Magistrate and District Collector,
Velunachiar Valagam, Dindigul.
- 3.The Inspector of Police,
Town North Police Station,
Dindigul.
- 4.The Joint Secretary to Government
Public (Law & Order), Fort Saint George, Chennai-9.
- 5.The Superintendent of Prison,
Madurai central prison, Madurai
(In duplicate for communication to Detenu)
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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ORDER MADE IN
H.C.P (MD) No.1736 of 2015
12.01.2016