



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.1802 of 2015

Singam @ Raja

.. Petitioner

Vs.

1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai 600 009.

2.The District Magistrate and District Collector,
Office of the District Magistrate and District
Collector, Theni District,
Theni.

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.28/2015/C3, dated 18.12.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Singam @ Raja, S/o.Irulandithevar, aged about 45 years, now detained at Central Prison, Madurai, 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 detenu. He has been detained by the second respondent by his order in Detention Order No.28/2015/C3, dated 18.12.2015, 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.528 of 2015 registered on the file of



Cumbum North Police Station for an offence under Section 174 Cr.P.C. @ U/s.380 r/w 302 of the Indian Penal Code and the following four adverse cases:-

(i) Crime No.392 of 2008 registered on the file of Cumbum South Police Station for an offence under Section 392 of the Indian Penal Code;

(ii) Crime No.393 of 2008 registered on the file of Cumbum North Police Station for an offence punishable under Section 379 of the Indian Penal Code;

(iii) Crime No.727 of 2008 registered on the file of Cumbum North Police Station for an offence punishable under Section 392 of the Indian Penal Code; and

(iv) Crime No.136 of 2015 registered on the file of Cumbum North Police Station for an offence punishable under Section 387 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 public peace, 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 "*ipse dixit*".

4. In elaboration of the said contention, the learned counsel for the petitioner submits that the subjective satisfaction of Detaining Authority 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; 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 and that since the Detaining Authority referred to a bail order in another case, the subjective satisfaction expressed by him shall be *ipse dixit* not supported by cogent materials.

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** dated 14.12.2015 [**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 contention raised by the learned counsel for the petitioner are also heard.

7. In paragraph No.5 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:

"6.I am aware that Thiru.Singam @ Raja is lodged in Central Prison, Madurai in judicial custody in 28.12.2015. He has not applied any bail petition till date. Received a secret information that he or his relatives will be filed a bail petition in the competent Court very soon. Moreover in a similar case, at Allinagaram Police Station in FIR No.195/2013, u/s.302 of IPC, the accused Thiru.Muruganantham S/o.Kaliappan, Pandikovil Street, Allinagaram, was come out on bail given by the Honourable Madurai Bench of Madras High Court in Crl.O.P.(MD).No.15094/2013, dated 03.10.2013. Since in alike cases, bails are granted by the competent Courts after lapse of time. So there is a possibility for him also of coming out on bail."

8. The Detaining Authority expressed the subjective satisfaction that there was real possibility of the detenu coming out on bail by filing a bail application in respect of the ground case, namely, Crime No.528 of 2015 registered on the file of Cumbum North Police Station for an offence under Section 174 Cr.P.C. @ U/s.380 r/w 302 of the Indian Penal Code, since in a similar case, not being a case of a co-accused in the very same case, another person was granted bail. The Detaining Authority made a reference to the non-filing of a bail application in the ground case. However, the Detaining Authority chose to express the subjective satisfaction of the real possibility of the detenu coming out on bail in the ground case, by making a reference to a bail order granted to one Muruganantham in respect of an other case by the Madurai Bench of Madras High Court in Crl.O.P.(MD). No.15094 of 2013, on 03.10.2013. Such a comparison with 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 this Court in **H.C.P(MD).No.1567 of 2015** dated 14.12.2015 [**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 liable to be vitiated on the said ground alone.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 18.12.2015, made in Detention Order No.28/2015/C3, by the second respondent / the District Collector and District Magistrate, Theni District, Theni and directs the release of the detenu by name Singam @ Raja S/o.Irulandithevar, aged about 45 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai 600 009.
 - 2.The District Magistrate and District Collector,
Office of the District Magistrate and District
Collector, Theni District, Theni.
 - 3.The Joint Secretary to Government, Public(Law and Order),
Fort St.George, Chennai-9
 - 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
 - 5.The Commissioner of Police, Madurai District
 6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1cc to Mr.R.Alagumani, Advocate Sr.No.5614
gcg
AA/AAL-MPA/09.02.2016/4p-8c

ORDER MADE IN
H.C.P (MD) No.1802 of 2015
27.01.2016