



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.1808 of 2015

Anitha

.. Petitioner

Vs.

1.The Secretary to Government,

State of Tamil Nadu

Home, Prohibition and Excise Department,

Fort.St.George, Chennai 600 009.

2.The District Collector and District Magistrate,

Office of the District Collector and District

Magistrate, Kanniyakumari District,

at Nagercoil.

3.The Superintendent of Prison,

Palayamkottai Central Prison,

Tirunelveli.

.. 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 passed in P.D.No.46/2015, dated 15.12.2015 and quash the same and direct the respondents to produce the detenu by name Edwin @ Edwin Robert @ Sappayan S/o.Samuel, aged about 36 years, detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Ramar

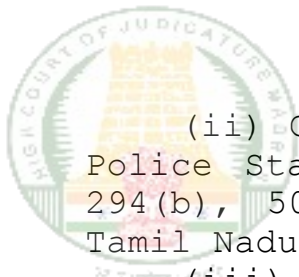
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of the detenu - Edwin @ Edwin Robert @ Sappayan S/o.Samuel. He has been detained by the second respondent by his detention order in P.D.No.46/2015, dated 15.12.2015, 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.1029 of 2015 on the file of Thuckalay Police Station registered for offences punishable under Sections 294(b), 448, 307 and 506 (ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and the following four adverse cases:-

(i) Crime No.5 of 2013 registered on the file of Thuckalay Police Station for offences punishable under Sections 341, 294(b), 324 and 506(ii) of the Indian Penal Code;



(ii) Crime No.972 of 2014 registered on the file of Thuckalay Police Station for offences punishable under Sections 341, 387, 294(b), 506(ii) of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act;

(iii) Crime No.501 of 2015 registered on the file of Thuckalay Police Station for offences punishable under Sections 294(b), 324, 307 and 506(ii) of the Indian Penal Code; and

(iv) Crime No.752 of 2015 registered on the file of Thuckalay Police Station for offences punishable under Sections 294(b), 323, 324 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 peace and 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 detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention the following contention:-

"The subjective satisfaction expressed by the Detaining Authority regarding the imminent possibility of the detenu coming out on bail in the ground case shows non-application of mind on the part of the Detaining Authority. The detaining authority failed to take note of the fact that the ground case differs from the case relied on by the detaining authority as similar case, insofar as the ground case has been registered for an offence under a special enactment viz., Section 4 of the prohibition of the Tamil Nadu Prohibition of Harassment of Women Act, apart from the offences punishable under the provisions of the Indian Penal Code, whereas the alleged similar case was registered only for offences punishable under the provisions of the Indian Penal Code. The same will show non-application of mind on the part of the Detaining Authority."

4. 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.

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:

"I am aware that Thiru.Edwin @ Edwin Robert @ Sappayan was arrested in Thuckalay P.S. on 10.11.2015 U/s.294(b), 448, 307 and 506(ii) IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act 2002 on 25.11.2015 at



11.00 hors. at Kozhiporvilai Junction and duly produced before the Judicial Magistrate, Padmanabhapuram on the same day and remanded upto 09.12.2015 and lodged at District Jail, Nagercoil as a remanded prisoner and the remand period further extended till 22.12.2015. The bail application is filed on his behalf in Crl.M.P.No.3628/2015 on 07.12.2015 before the Court of District and Sessions Judge, Kanyakumari Division at Nagercoil, is pending. In a similar case registered in Vadasery Police Station in Cr.No.1086/2014 U/s.341, 294(b), 323, 307 and 506 (ii) IPC the accused Thiru.Seenivasan @ Seeni was released on condition bail on 08.01.2015 in Crl.M.P.No.55/2015 in the Court of District and Sessions Judge, Kanyakumari Division at Nagercoil. (The copy of the order in Crl.M.P.No.55/2015 dated 08.01.2015 of the Court of District and Sessions Judge, Kanniyakumari Division at Nagercoil is enclosed with typed set of papers). Hence I infer that bail is granted in such cases by the Courts, it is very likely that Thiru.Edwin @ Edwin Robert @ Sappayan may come out on bail in the pending bail application in Crl.M.P.No.3628/2015 in the Court of the District and Sessions Judge, Kanniyakumari at Nagercoil."

6.The Detaining Authority referred to the fact that the bail application filed by the detenu in the ground case was pending on the file of the District and Sessions Judge, Madurai in Crl.M.P.No.3628/2015 as on the date of passing of the order of detention. While referring to the bail order granted to another person in an other case, as the basis for the subjective satisfaction of the detaining authority regarding the real possibility of the detenu coming out on bail in the ground case, the detaining authority failed to note the difference between the two cases. The ground case was registered for offences under Sections 294(b), 448, 307 and 506 (ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002, whereas the similar case relied on the by the detaining authority was registered for offences under Sections 341, 294(b), 323, 307 and 506(ii) IPC alone. The penal provisions found in the ground case viz., Section 448 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 (an offence under special enactment) are not found in the similar case relied on by the detaining authority. Similarly, sections 341 and 323 IPC found in the similar case are not found in the ground case. Hence, as rightly contended by the learned counsel for the petitioner, there is ~~impossibility~~ *ipse dixit* making the subjective satisfaction of the detaining authority regarding the real possibility of the detenu coming out on bail "ipse dixit" not supported by cogent materials,



besides there being non-application of mind on the part of the detaining authority. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is vitiated on this ground.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 15.12.2015, made in P.D.No.46/2015, by the second respondent / the District Collector and District Magistrate, Kanniyakumari District at Nagercoil and directs the release of the detenu by name Edwin @ Edwin Robert @ Sappayan S/o.Samuel, aged about 36 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai 600 009.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District
Magistrate, Kanniyakumari District, at Nagercoil.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison, Tirunelveli.
- 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.

+One cc to Mr.R.Alagumani, Advocate, SR.No.5615

gcg

RL/7C/AAL/MPA/9/2/2016

Order made in
H.C.P. (MD) No.1808 of 2015

Dated: 27.01.2016