



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.1809 of 2015

Arockia Mari

.. 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, Tirunelveli District,
Tirunelvelii.

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.147/2015, dated 17.12.2015 and quash the same and direct the respondents to produce the detenu by name Ravindran, S/o.Yesumuthu, aged about 29 years, now detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For petitioner : Mr.R.Alagumani

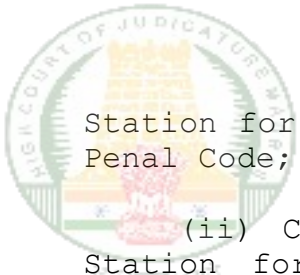
For Respondents : Mr.A.Ramar
Additional Public Prosecutor

O R D E R

[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 M.H.S.Confdl.No.147/2015, dated 17.12.2015, 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.154 of 2015 registered on the file of Devarkulam Police Station for offences punishable under Sections 341, 294(b), 387, 307 and 506(ii) of the Indian Penal Code r/w 25(1-A) Arms Act and the following five adverse cases:-

(i) Crime No.162 of 2015 registered on the file of Manur Police



Station for offences under Sections 294(b), 387 and 506(ii) of the Indian Penal Code;

(ii) Crime No.339 of 2015 registered on the file of Manur Police Station for offences punishable under Sections 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act @ Section 294(b), 506(ii) of the Indian Penal Code and 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act;

(iii) Crime No.340 of 2015 registered on the file of Manur Police Station for offences punishable under Sections 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act @ Section 294(b), 506(ii) of the Indian Penal Code and 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act;

(iv) Crime No.341 of 2015 registered on the file of Manur Police Station for offences punishable under Sections 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act @ Section 294(b), 506(ii) of the Indian Penal Code and 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act; and

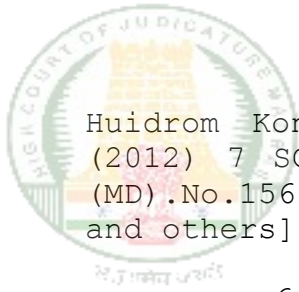
(v) Crime No.417 of 2015 registered on the file of Manur Police Station for offences punishable under Sections 406, 420, 294(b) and 506 (ii) of the Indian Penal Code.

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 public peace, and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case and in the fifth adverse 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 the fifth adverse 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.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:

"6.... I am also aware that Thiru.Ravindran is taking action to take out her husband on bail by filing a bail application for Manur Police Station Crime Number 417/2015. I am aware that he has not filed any bail application so far in Manur Police Station Crime Number 417/2015. 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 case bails are granted by the appropriate Courts. I am also aware that in a similar case bail has been granted to Subramanian in CRMP No.3526/2014, dated 28.05.2014 by the Judicial Magistrate, Ambasamudram. I therefore infer that there is real possibility of his (Thiru.Ravindran) coming out on bail in Manur Police Station Crime Number 417/2015, since bails are granted by the appropriate Courts in such cases."

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, since in a similar case, not being a case of a co-accused in the very same case, another person was granted bail. In respect of the fifth adverse case, namely, Crime No.417 of 2015 registered on the file of Manur Police Station for offences under Sections 406, 420, 294(b) and 506(ii) of the Indian Penal Code, the Detaining Authority made a reference to the non-filing of a bail application. However, the Detaining Authority chose to express the subjective satisfaction of the real possibility of the detenu coming out on bail in the fifth adverse case by making a reference to a bail order granted to one Subramanian in respect of some other case by the Judicial Magistrate, Ambasamudram in Cr.M.P.No.3526/2014, on 28.05.2014. 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 17.12.2015, made in M.H.S.Confdl.No.146/2015, by the second respondent / the District Collector and District Magistrate, Tirunelveli District, Tirunelveli and directs the release of the detenu by name Ravindran S/o.Yesumuthu, aged about 29 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(CS-II)

/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, Tirunelveli District,
Tirunelvelii.
- 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 4.The Joint Secretary to Government
Public (Law & Order)
Fort St.George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.R.Alagumani, Advocate Sr.No.5610

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ORDER MADE IN
H.C.P (MD) No.1809 of 2015
27.01.2016