



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.05.2016

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE B.GOKULDAS**

H.C.P. (MD) No.145 of 2016

Vasanth @ Velappan : Petitioner

Vs.

- 1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
 - 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kanniyakumari District at Nagarcoil.
 - 3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus to call for the entire records, connected with the detention order of the second respondent in P.D.No.02/2016, dated 28.01.2016, and quash the same and direct the respondents to produce the detenu namely Vasanth @ Velappan, son of Krishnapillai, aged about 24 years, detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner	: Mr.R.Alagumani
For Respondents	: Mr.C.Ramesh, Additional Public Prosecutor

ORDER

[Order of the Court was made by M.V.MURALIDARAN, J., and
B.GOKULDAS, J.]

The petitioner is the detenu. The detenu has been detained by the second respondent by his order in P.D.No.02/2016, dated 28.01.2016, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, taking note of the Criminal Case No.9 of 2016 on the file of Boothapandi Police Station registered for alleged offences punishable under



Sections 294(b), 387 and 506(ii) of IPC and 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act 1992 and the following three adverse cases:-

i) Crime No.29 of 2013 registered on the file of Boothapandy Police Station for the offences punishable under Sections 147, 148, 341, 302, 324 IPC @ 147, 148, 341, 307 and 302 of IPC.

ii) Crime No.296 of 2014 registered on the file of Boothapandy Police Station for the offences punishable under Sections 147, 148, 341, 294(b), 302 and 120(b) IPC.

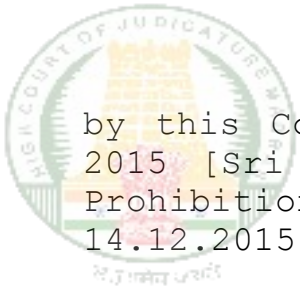
iii) Crime No.300 of 2015 registered on the file of Boothapandy Police Station for the offences punishable under Sections 448, 294(b), 342, 323, 427, 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Woman Harassment Act 2002 r/w Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of the "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and public health 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 that in the ground case, no bail application was filed, but still the detaining authority expressed subjective satisfaction that there was a real possibility of the detenu coming out on bail in the ground case.

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 negative 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 Mehta 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



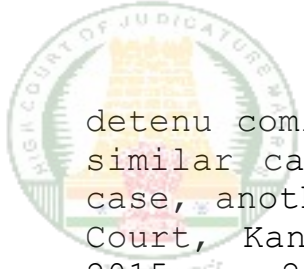
by this Court in an unreported decision in H.C.P(MD).No.1567 of 2015 [Sri Devi Vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others], vide order dated 14.12.2015.

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.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:

" 5) I am aware that Thiru.Vasanth @ Velappan was arrested on 08.01.2016 at 11.00 hrs. at Esanthimangalam bus stop in Boothapandy P.S.Cr.No.9/2016 u/s.294(b), 387, 506(ii) IPC and 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act 1992 and duly produced before the Judicial Magistrate, Boothapandy on the same day and remanded up to 22.01.2016 and lodged in District Jail, Nagercoil and his remand period extended up to 03.02.2016. I am also aware that so far no bail application was filed on his behalf in any of the courts. In a similar case registered in Suchindrum Police Station in Cr.No.637 of 2016 u/s.147, 294(b), 506(ii) IPC and Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act 1992 the accused Thiru.Ahamadhu was released on condition bail on 27.11.2015 in Crl.M.P.No.3523 of 2015 in the Court of District and Sessions Judge, Kanniyakumari Division at Nagercoil. (The copy of the order in Crl.M.P.No.3523 of 2015 dated 27.11.2015 of the Court of District and Sessions Judge, Kanniyakumari Division at Nagercoil is enclosed with the typed set of papers). Hence In infer that bail is granted in such cases by the Courts, there is real possibility that Thiru.Vasanth @ Velappan may come out on bail by filing a bail application either in the lower court or in the higher Court. "

8. The Detaining Authority referred to the fact that no bail application was filed in the ground case in Crime No.9 of 2016 registered on the file of Boothapandy 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 District and Sessions Court, Kanniyakumari Division at Nagercoil in CrI.M.P.No.3523 of 2015 on 27.11.2015. 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 by this Court in an unreported decision in H.C.P(MD).No.1567 of 2015 [Sri Devi Vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others], vide order dated 14.12.2015. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is 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 28.01.2016, made in P.D.No.02/2016, by the second respondent, the District Collector and District Magistrate, Kanniyakumari District at Nagercoil, and directs the release of the detenu by name Vasanth @ Velappan, S/o.Krishnapillai, aged about 24 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (AS)

/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,
Office of the District Collector and District Magistrate,
Kanniyakumari District at Nagercoil.
 - 3.The Superintendent of Prison,
Palayamkottai Central Prison, Tirunelveli District.
 - 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.26281

am/ps/

RL/7C/4P/GSV/PM/SARII/19/5/2016

<https://hcservices.ecourts.gov.in/hcservices/>

Order made in
H.C.P. (MD) No.145 of 2016

Dated:
17.05.2016