



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2016

CORAM :

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN**  
**and**  
**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

Habeas Corpus Petition (MD) No.149 of 2016

Raja alias Rajagopal

... Petitioner

Vs.

1. State of TamilNadu, represented by  
The Secretary to Government,  
Home Prohibition and Excise Department,  
Fort St. George,  
Chennai - 9.

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

3. The Superintendent,  
Central Prison,  
Tiruchirappalli.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the entire records in detention order passed in Cr.M.P.No.01/2016, dated 27.01.2016, on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner, namely, Raja alias Rajagopal, son of Kaliyaperumal, Male, aged 38 years, who is detained in Central Prison, Tiruchirappalli before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

For Respondents : Mr.C.Ramesh,

Additional Public Prosecutor.

**ORDER**

(Order of the Court was made by **R. MAHADEVAN, J**)

The petitioner is the detenu, namely, Raja alias Rajagopal, son of Kaliyaperumal, aged 38 years, who has been detained under the Tamil Nadu Act 14 of 1982 by the order of the second respondent, in his proceedings in Cr.M.P.No.01/2016, dated 27.01.2016, branding him as a 'Goonda', taking note of the ground case in Crime No.37 of 2016 on the file of Jayankondam Police Station, registered for the alleged offence punishable under Section 397 I.P.C. and also the following adverse cases:

(i) Cr.No.433 of 2014 on the file of Jayankondam Police Station, for the offence under Sections 454 and 380 I.P.C.

(ii) Cr.No.432 of 2014 on the file of Jayankondam Police Station, for the offence under Sections 454 and 380 I.P.C.

(iii) Cr.No.21 of 2015 on the file of Jayankondam Police Station, for the offence under Sections 457 and 380 I.P.C.

(iv) Cr.No.617 of 2015 on the file of Jayankondam Police Station, for the offence under Sections 454 and 380 I.P.C.

Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. We have heard the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds have been raised in this petition, the learned Counsel appearing for the petitioner would mainly focus his argument on the ground that the subjective satisfaction arrived at by the Detaining Authority that there was every real possibility for the detenu to come out on bail is not based on any material. Moreover, the detaining authority referred to a bail order in a different case when no bail application was pending as on the date of the order of detention in the ground case. The said comparison to express subjective satisfaction is against the dictum 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** and also the judgment of a Division Bench of the Madras High Court in **H.C.P[MD].No.1154 of 2015**, dated **11.08.2015** [**Chandrakala Vs. The Secretary to Government**] and thus, the detention order is liable to be set aside. This, according to the learned Senior Counsel appearing for the petitioner is totally baseless and reflecting the total non-application of mind of the Detaining Authority.

4. Despite the counter affidavit filed by the second respondent, the learned Additional Public Prosecutor is not in a position to dispute the above fact.

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

5. We have considered the above said submissions and perused



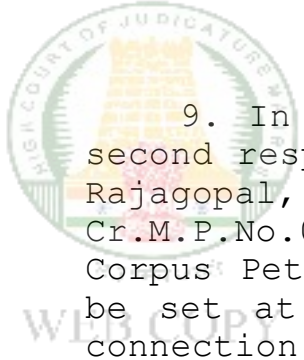
the materials available on record.

6. Regarding the subjective satisfaction of the detaining authority as to the real possibility of the detenu coming out on bail in the ground case, the detaining authority made the following observation:

"5. I am aware that Thiru Raja alias Rajagopal is in remand in Jayankondam PS Cr.Nos.433/2014, 432/2014, 21/2015, 617/2015 and 37/2016. He has not filed any bail petition so far. In a similar case registered at Palakarai PS Cr.No.277/2012, u/s 392 and 397 IPC, bail was granted by the Addl. Dist. Judge, PCR i/c Principal Sessions Judges, Tiruchirappalli to one Elangovan in Cr.M.P.No.627/2012, dated 02.04.2012, who was remanded on 17.3.2012. In a similar case registered in Srirangam PS Cr.No.787/2014 bail was granted to Krishnan by the Judicial Magistrate No.III, Tiruchirappalli in Cr.M.P.No.2827/2015 on 26.5.2015. From this, I draw the inference that there is a real possibility of his (Raja alias Rajagopal) coming out on bail for the above cases by filing bail petitions. ...."

7. It is an admitted fact that no bail application was filed by the detenu in the ground case and the same was also taken note of by the detaining authority. When no bail application is pending, the detaining authority could refer to a bail granted to a co-accused in the same case to express the subjective satisfaction of the real possibility of the detenu coming out on bail. Only in case a bail application is pending, the detaining authority can refer to a similar case in which bail was granted to the accused therein, in support of his subjective satisfaction regarding the real possibility of the detenu coming out on bail. It has been held so by a Division Bench of the Madras High Court in **H.C.P.No.1154 of 2015**, dated **11.08.2015** [**Chandrakala Vs. The Secretary to Government**], following the judgment 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**, which position was clarified by a Division Bench of the Hon'ble Supreme Court consisting of two Hon'ble Judges in **Huidrom Konungjao Singh Vs. State of Manipur and others** reported in **(2012) 7 SCC 181**.

8. Hence, we come to the conclusion that the subjective satisfaction expressed by the detaining authority regarding the real possibility of the detenu coming out on bail in the ground case to justify the clamping of the order of detention, while the detenu was in custody as a remand prisoner, can be termed "ipse dixit" and is not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.



9. In the result, the impugned detention order passed by the second respondent, detaining the detenu, namely, Raja alias Rajagopal, son of Kaliyaperumal, aged 38 years, made in Cr.M.P.No.01/2016, dated 27.01.2016 is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,  
State of TamilNadu,  
Home Prohibition and Excise Department,  
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Chennai - 9.
2. The District Collector and District Magistrate,  
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District Magistrate,  
Ariyalur District,  
Ariyalur.
3. The Superintendent,  
Central Prison,  
Tiruchirappalli.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
5. The Joint Secretary to Government,  
Public (Law & Order)  
Fort st. George, Chennai-9.

SMS/RSB

TE/PEK/SAR-I : 02/06/2016 : 4P/6C

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