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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.05.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

AND

THE HONOURABLE MR. JUSTICE B.GOKULDAS

H.C.P. (MD) No.152 of 2016

Vengatesan @ Venkatraman

: Petitioner

Vs.

1.State of Tamil Nadu, rep. By
The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-9.

2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

: 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 in detention order passed in C.O.C.No.04/2016, dated 08.01.2016 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the petitioner, namely Vengatesan @ Venkatraman, S/o.Mahalingam, Male, aged 25 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 **M.V.MURALIDARAN, J., and B.GOKULDAS, J.**]

The petitioner is the detenu. The detenu was detained by the second respondent by his order in C.O.C.No.04/2016, dated 08.01.2016, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.356 of 2015 registered on the file of Kariyapattinam Police Station for the offences punishable under Sections 294(b), 341, 397 of IPC and the following three adverse cases:-

i) Crime No.90 of 2015 registered on the file of
<https://hcservices.ecourts.gov.in/hcservices/>
Thiruthuraiipoondi Police Station for an offence punishable
under Section 379 of IPC;



ii) Crime No.134 of 2015 registered on the file of Alivalam Police Station for the offences punishable under Sections 457 and 380 of IPC and

iii) Crime No.140 of 2015 registered on the file of Alivalam Police Station for the offences punishable under Sections 379 and 506(ii) of IPC.

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 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 a number of grounds have been raised assailing the order of detention, the learned counsel for the petitioner mainly relies on the contention that the subjective satisfaction expressed by the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case is *ipse dixit* not supported by cogent materials insofar as it does not refer to any similar case particulars.

4. 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.

5. The Detaining Authority, in the grounds of detention, while expressing subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case made the following observations:-

"I am aware that Thiru.Vengatesan @ Venkatraman, Male, aged 25/2015, S/o.Mahalingam was produced before the learned District Munsif cum Judicial Magistrate, Vedaranyam on 16.12.2015 and remanded in District Jail, Nagapattinam as a remand prisoner on the same day itself. His remand period is upto 30.12.2015 and further his remand period was extended upto 12.01.2016. I am aware that Thiru.Vengatesan @ Venkatraman, Male, aged 25/2015, S/o.Mahalingam is in remand in connection with the case in Kariyapattinam Police Station Cr.No.356/2015. I am aware that he had moved a bail petition before the learned District Munsif cum Judicial Magistrate, Vedaranyam in Cr.M.P.No.7258/2015 in connection with the above case and the same was dismissed by the learned District Munsif cum Judicial Magistrate, Vedaranyam on 22.12.2015. Further bail petition filed before the Sessions Judge, Nagapattinam was dismissed in Cr.M.P.No.89/2016, dated 07.01.2016. It is learnt that Tmt.Nagammal mother of Thiru.Vengatesan @ Venkatraman, Male, aged 25/2015, S/o.Mahalingam is tried to file bail petition before Honourable High Court, Chennai. Hence, I infer that there is real



possibility of his (Thiru.Vengatesan @ Venkatraman, Male, aged 25/2015, S/o.Mahalingam) coming out on bail by filing a bail application for the above case before the appropriate Court and higher Court."

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6. The above said observation, as rightly contended by the learned counsel for the petitioner, shows the pre-determination of mind on the part of the Detaining Authority that the bail petition filed before the Sessions Court, Nagapattinam was dismissed in Cr.M.P.No.89/2016 and that there is a real possibility of the detenu coming out on bail by filing a bail petition before the higher forum. On that score alone, the order of detention is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 08.01.2016, made in C.O.C.No.04/2016, by the second respondent, the District Magistrate and District Collector, Nagapattinam District, Nagapattinam and directs the release of the detenu by name Vengatesan @ Venkatraman, S/o.Mahalingam, aged about 25 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

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-9.
- 2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.(in duplicate communicate to the detenu)
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Joint Secretary to Government,
Public (Law & Order),Fort.Saint George,Chennai - 9.

Order made in

H.C.P. (MD)No.152 of 2016

Dated: 17.05.2016