



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.05.2016

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CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P (MD) No.17 of 2016

Saroja

: Petitioner/Wife of Detenu

Vs.

1. State of Tamil Nadu,
Rep. by the Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil,
Nagercoil.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
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 passed in P.D.No.48 of 2015, dated 21.12.2015 on the file of the second respondent herein and to quash the same and to direct the respondents to produce the person or body of the detenu namely, Varuvelraja @ Saminathan @ Samy, S/o.Savarimuthu Nadar, aged about 45 years, now detained at Central Prison, Palayamkottai before this Court and to set him at liberty forthwith.

For Petitioner : Mr.K.Sudalaiyandi

For Respondents : Mr.C.Ramesh

Additional Public Prosecutor

**O R D E R**

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

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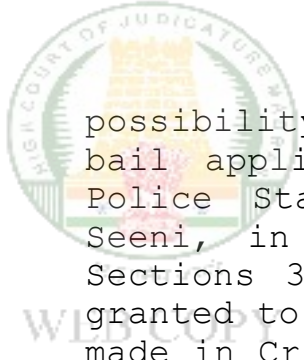
The petitioner is the wife of the detenu. The detenu, namely, Varuvelraja @ Saminathan @ Samy was detained by the second respondent by his order in P.D.No.48 of 2015 dated 21.12.2015, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.384 of 2015 on the file of Aralvoimozhy Police Station registered for offences punishable under Sections 294(b), 387 and 506(ii) I.P.C.

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 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 order of detention is assailed on several grounds, the learned counsel for the petitioner relies on the contention that the subjective satisfaction expressed by the detaining authority regarding the imminent possibility of the detenu coming out on bail in the ground case can be even termed *ipse dixit*, not based by cogent materials. In elaboration of the said contention, the learned counsel for the petitioner submits that when no bail application is pending in respect of the ground case, the detaining authority referred to another case as similar case particulars. The case of a co-accused in the same case alone can be cited as a bail order in a similar case. Since the detaining authority has chosen to refer to some other order passed in some other case, when no bail application was moved on behalf of the detenu, the comparison was improper and the same will make 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.

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 detention order, the detaining authority referred to the fact that no bail application in the ground case is pending till the passing of the order of detention. However, the detaining authority proceeded further to express his subjective satisfaction that there was real



possibility of the detenu coming out on bail in future by filing bail application, as in a similar case registered in Vadasery Police Station, as against the accused, namely, Seenivasan @ Seeni, in Crime No.1086 of 2014 for offences punishable under Sections 341, 294(b), 323, 307 and 506(ii) I.P.C., and bail was granted to the said Seenivasan @ Seeni, by order dated 08.01.2015, made in CrI.M.P.No.55 of 2015 by the learned District and Sessions Judge, Kanniyakumari Division at Nagercoil. A copy of the said order is found at page 259 of the booklet. It is an entirely different case, in which the accused therein was granted bail for the reasons stated therein. As rightly pointed out by the learned counsel for the petitioner, when no bail application is pending in the case in which the subjective satisfaction of the real possibility of the detenu coming out on bail is to be expressed, then the comparable order shall be an order passed in respect of a co-accused and not an order passed in any other case. The said dictum has been laid down by a Larger Bench of the Supreme Court consisting of three Judges in **Rekha Vs. State of Tamil Nadu and other** reported in (2011) 5 SCC 244, further explained by another Division Bench of the Hon'ble Supreme Court in **Hudirom Konungjao Singh Vs. State of Manipur and others** reported in (2012) 7 SCC 181 and the same is also followed by us in **H.C.P.(MD).No.1567 of 2015 [Sri Devi Vs. State of Tamil Nadu and others]**, vide order dated 14.12.2015. Hence, we do have no hesitation in coming to the conclusion that the comparison made for expression of subjective satisfaction is not proper and the expression of subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case is only *ipse dixit* not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 21.12.2015, made in P.D.No.48 of 2015, by the second respondent, the learned District Collector and District Magistrate, Office of the District Collector and District Magistrate, Kanniyakumari District at Nagercoil, Nagercoil and directs the release of the detenu by name Varuvelraja @ Saminathan @ Samy, S/o.Savarimuthu Nadar, aged about 45 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar



To

1. State of Tamil Nadu,
Rep. by the Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector and District Magistrate,
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Nagercoil.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli.
4. The Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

PMU/VS

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

Order made in
H.C.P (MD) No.17 of 2016
Dated:- 17.05.2016