



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.06.2016

Delivered on : 29.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P(MD)No.173 of 2016

K.Kalaiyarasi : Petitioner
Vs.

1.State represented by,
The District Collector and
District Magistrate,
Tirunelveli District,
Tirunelveli.

2.The Secretary to Government,
Public (Law and Order, F) Department,
Government of Tamil Nadu Secretariat,
Chennai-9.

3.The Secretary to Government,
Government of India,
Ministry of Home Affairs,
(Department of Internal Security),
North Block,
New Delhi-110 001.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the records from the first respondent in N.S.A.No.01/2016, dated 21.01.2016 by setting aside the said order of detention passed by the first respondent and setting the detenu Kathirvelsamy, aged 39 years, S/o.Thenkarai Maharaja Thalaivar, at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner : Mr.V.Kathirvelu,
Senior Counsel,

For Mr.V.Malaiyendran

For Respondents 1&2 : Mr.C.Ramesh,
Additional Public Prosecutor

For Respondent No.3 : Mr.R.Nandakumar,
Senior Panel Counsel



ORDER

K.K.SASIDHARAN, J.

This Habeas Corpus Petition is filed by the wife of the detenu, by name Kathirvelsamy, detained by the District Collector -cum- District Magistrate, Tirunelveli, by order dated 21 January, 2016.

SUMMARY OF FACTS:

2. The husband of the petitioner (hereinafter referred to as 'the detenu') was arrayed as an accused in Crime No.139 of 2015 under Section 302 of Indian Penal Code. Since the detenu and his men murdered a member of Mohammedan Community, normal life has been affected throughout Eruvadi and surrounding locality. The police produced the detenu before the Judicial Magistrate Court, Valliyoor and he was remanded to judicial custody upto 25 January, 2016. In the meantime, the District Magistrate, with a view to prevent the detenu from committing similar offences, detained him under the provisions of National Security Act.

3. The detention order is challenged primarily on the ground that there was non-application of mind and it was a mechanical exercise of power.

4. We have heard the learned Senior Counsel for the petitioner, the learned Additional Public Prosecutor appearing on behalf of the State and the learned Senior Panel Counsel appearing on behalf of the Central Government.

ANALYSIS:

5. The detenu was involved in a case in Crime No.139 of 2015 on the file of Thirukkurungudi Police Station. The detenu along with others murdered Sheik Mohamed Kajamohaideen, auto driver by profession, on account of previous enmity. The police arrested the detenu and produced before the learned Judicial Magistrate, Valliyoor. He was lodged at District Jail, Srivaikundam, pursuant to the order of remand passed by the learned Judicial Magistrate, Valliyoor, on 29 December, 2015.

6. The District Magistrate opined that there is a real possibility of the detenu coming out on bail by filing bail application. The Detaining Authority compared the case of another person, by name Nelson Geerald Bright, who got bail in Cr.M.P.1479 of 2015 from the Principal Sessions Court, Tirunelveli. The Detaining Authority was aware of the fact that the detenu has not filed bail application before the Sessions Court. The possibility of filing a bail application was taken as the reason to detain him. In short, bail granted in the so called similar case to an

<https://hccasesearch.in/> has been taken as the material to form an opinion that in the subject case, there is a possibility of granting bail to the detenu.



7. In Huidrom Konungjao Singh v. State of Manipur [2012(7) SCC 181], the Supreme Court held that a similar case is relevant only in case a co-accused in the same offence is enlarged on bail and on the basis of which, the detenu could be enlarged on bail. The Supreme Court made it clear that in case the orders relied upon by the Detaining Authority do not relate to co-accused in the same case, meaning thereby, the accused released on those cases on bail, had no concern with the present case, such cases cannot be taken as the basis to arrive at a satisfaction that the detenu would be enlarged on bail at any time. The Supreme Court opined that merely because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case the detenu would be released on bail.

8. In the subject case, the bail order in Cr.M.P.No.1479 of 2015 in Crime No.45 of 2015 under Sections 147, 148, 341, 365 and 302 of Indian Penal Code in respect of Thiru.Nelson Geerald Bright was taken as the basis to arrive at a satisfaction that the detenu is likely to be released on bail. Admittedly, the said bail order does not relate to the co-accused in the very same case. The accused released by the Principal Sessions Court, Tirunelveli, in Cr.M.P.No.1479 of 2015 had absolutely no connection with the present case. We are, therefore, of the view that the Detaining Authority considered irrelevant materials and detained the detenu. The impugned detention order is, therefore, liable to be quashed.

DISPOSAL:

9. In the result, the impugned Detention Order, passed by the first respondent, in his proceedings in N.S.A.No.01/2016, dated 21.01.2016, is quashed. The detenu, namely, Kathirvelsamy, S/o.Thenkarai Maharaja Thalaivar, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

10. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1.The District Collector and
District Magistrate,
Tirunelveli District,
Tirunelveli.



2.The Secretary to Government,
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3.The Secretary to Government,
Government of India,
Ministry of Home Affairs,
(Department of Internal Security),
North Block,
New Delhi-110 001.

4.The Superintendent of Central Prison,
Palayamkottai.

5.The Joint Secretary to Government,
Public(Law and Order), Fort Saint George, Chennai-09

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.K.Prabhu, Advocate, SR.No.34119

+One cc to Mr.R.Nandakumar, Advocate, SR.No. 34346

SML
RL/9C/4P/DB/SARII/6/7/2016

Order made in
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