



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.06.2016

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.177 of 2016

Hajara

: Petitioner

Vs.

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

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

3.The District Collector and District Magistrate,
Kanniyakumari District,
Nagercoil.

4.The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order in P.D.No.01-N.S.A./2016, dated 27.01.2016 on the file of the third respondent and quash the same as illegal and direct the respondents to produce the body and person of the petitioner's husband namely Altaf, S/o.Bagrudheen, aged 31 years now confined at Central Prison, Palayamkottai, Tirunelveli District, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.S.M.A.Jinnah

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

For Respondent No.1

: Mr.R.Murugappan,
Senior Panel Counsel



For Respondents 2to4 : Mr.S.Shanmugavelayutham,
State Public Prosecutor,
Assisted by
Mr.C.Ramesh,
Additional Public Prosecutor

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ORDER

This Habeas Corpus Petition is filed by the wife of Thiru.Altaf, who is presently detained at the Central Prison, Palayamkottai, pursuant to the order passed by the District Collector and District Magistrate, Kanniyakumari District at Nagercoil, on 27 January, 2016 invoking the provisions of the National Security Act, 1980.

FACTUAL BACKGROUND:

2. The husband of the petitioner (hereinafter referred to as 'the detenu') was involved in two adverse cases, one registered by the Station House Officer, Thuckalay Police Station and another by Kottar Police Station. Subsequently, he assaulted Tmt.Shameera Banu and the same resulted in the registration of a case in Crime No.328 of 2014 on the file of Kottar Police Station. The detenu was arrested by the police and produced before the learned Judicial Magistrate. He was remanded by the learned Judicial Magistrate. The District Magistrate was of the view that in case the detenu is released on bail, he would indulge in similar acts prejudicial to the maintenance of public order and security of the State, as contemplated under Section 3(2) of the National Security Act. Therefore, the District Magistrate passed an order of detention dated 27 January, 2016, under the provisions of the National Security Act.

3. The petitioner challenges the detention order on multiple grounds including the ground of mechanical exercise of power. According to the petitioner, the cases referred to by the Detaining Authority and the bail granted in certain other cases have no relevance to the cases registered against the detenu and as such, the impugned detention order is liable to be quashed.

4. The respondents 1 to 3 filed counter-affidavits justifying the impugned order of detention.

5. We have heard the learned counsel for the petitioner, learned Senior Panel Counsel for the first respondent and the learned Public Prosecutor appearing on behalf of respondents 2 to 4, assisted by the learned Additional Public Prosecutor.



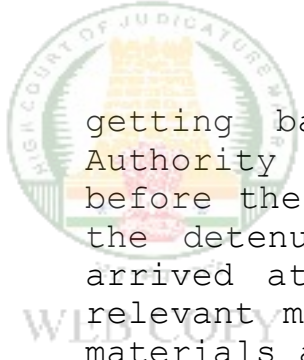
ANALYSIS:

6. The detenu was earlier involved in two adverse cases. The first case was registered by the Station House Officer, Thuckalay Police Station, in Crime No.792 of 2013, under Sections 147, 148, 341, 294(b), 324, 307 and 506(ii) of Indian Penal Code. The case was registered on 26 October, 2013. The case is still under investigation. The second case was registered by the Station House Officer, Kottar Police Station, in Crime No.1053 of 2014. The case was registered on 13 December, 2014, pursuant to the complaint preferred by Thiru.Ansari. The police registered a case under Section 387 of Indian Penal Code. The police laid the charge sheet on 07 January, 2016 before the Judicial Magistrate Court No.II, Nagercoil.

7. Subsequently, the detenu was involved in another case registered by the Station House Officer, Kottar Police Station, in Crime No.328 of 2014. The case was registered under Section 307 of Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The case was registered on 11 April, 2014. The detenu was arrested on 04 January, 2016. Thereafter, the Detaining Authority invoked the provisions of the National Security Act and passed the order of detention.

8. The Detaining Authority found that the bail application filed by the detenu in CrI.M.P.No.97 of 2016 was pending before the learned District and Sessions Judge, Kanniyakumari Division at Nagercoil. According to the Detaining Authority, in a similar case in Crime No.215 of 2014 registered by Eathamozhy Police Station, the accused was released on bail by the learned Judicial Magistrate No.III, Nagercoil. The bail was granted on 28 October, 2014. The Detaining Authority, on the basis of the bail granted to a similarly situated accused in another crime number, observed that there is a possibility of the detenu coming out on bail.

9. The Detaining Authority arrived at a finding that the detenu would be released on bail, solely on the basis of the order in Cr.M.P.No.4517 of 2014, registered against Thiru.Elankaviarasan by the Eathamozhy Police Station in Crime No.215 of 2014. The Detaining Authority failed to consider the material fact that the detenu is an accused in a case involving offences punishable under Section 307 of Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The bail application is pending before the Sessions Judge, Nagercoil. The similar case referred to by the Detaining Authority was pending only before the learned Judicial Magistrate. The case in Crime No.215 of 2014 was not in relation to a major offence, like Section 307 of Indian Penal Code or Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The Detaining Authority, without application of mind, observed that since bail was granted in such cases by the Court, it is very likely that the detenu would also come out by



getting bail in the pending bail application. The Detaining Authority compared a sessions offence with a warrant case pending before the Magistrate and thereby, arrived at a satisfaction that the detenu is likely to be released on bail. The satisfaction arrived at by the Detaining Authority was not on the basis of relevant materials. The Detaining Authority considered irrelevant materials and that was made the basis for detaining the detenu.

10. 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.

11. In the subject case, the bail order in CrI.M.P.No.4517 of 2014 in Crime No.215 of 2014 under Sections 153-A, 295-A of Indian Penal Code in respect of Thiru.Elankaviarasan was taken as the basis to arrive at a satisfaction that the detenu in all probability would 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 learned Judicial Magistrate No.III, Nagercoil, in CrI.M.P.No.4517 of 2014 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:

12. In the result, the impugned Detention Order, passed by the third respondent, in his proceedings in P.D.No.01-N.S.A./2016, dated 27.01.2016, is quashed. The detenu, namely, Altaf, S/o.Bagrudheen, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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

Sd/-

Assistant Registrar(CS-II)

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To

- 1.The Secretary to the Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi-110 001.
- 2.The Secretary to Government (Tamil Nadu),
Public (Law and Order-F) Department,
Secretariat, Fort St. George, Chennai-9.
- 3.The District Collector and District Magistrate,
Kanniyakumari District, Nagercoil.
- 4.The Inspector of Police,
Thuckalay Police Station, Kanyakumari District.
- 5.The Superintendent of Central Prison,
Palayamkottai, Tirunelveli District.
- 6.The Joint Secretary to Government,
Public (Law & Order), Fort St., George, Chennai-9.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.S.M.A.Jinnah, Advocate in SR.No.34143

+1 cc to M/s.R.Murugappan, Advocate in SR.No.34114

SML

CSL/GSV-PM/11.07.2016 : 5P/10C

Order made in
H.C.P(MD)No.177 of 2016
Delivered on: **29.06.2016**