



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.18 of 2016

Arumugathammal

: Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise (xiv) Department,
Secretariat,
Chennai.

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

3.The Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli District.
(Cr.No.233/2015.)

4.The Superintendent,
Central Jail, Palayankottai,
Tirunelveli 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 records pertaining to the proceedings in M.H.S.Confdl.No.139/2015, dated 08.12.2015 on the file of the second respondent and quash the detention order against the petitioner's son Nagarajan, aged 27 years and direct to set at liberty of the petitioner's son from the Central Jail, Palayankottai.

For Petitioner

: Mr.P.Ramasamy

For Respondents

: Mr.C.Ramesh,

Additional Public Prosecutor

ORDER

K.K.SASIDHARAN, J.

This Habeas Corpus Petition is filed by the mother of Thiru.Nagarajan, who was detained by the District Magistrate, Tirunelveli, pursuant to the detention order dated 08 December, 2015.

BRIEF FACTS:

2. The son of the petitioner (hereinafter referred to as 'the detenu') was involved in six adverse cases registered by Gangaikondan Police Station, Veeravanallur Police Station and Ambasamudram Police Station, under various provisions of Indian Penal Code. The ground case relates to the incident that took place on 15 November, 2015. The detenu threatened the complainant with aruval and indulged in acts of terror. The police registered a case in Crime No.233 of 2015 on the file of Kallidaikurichi Police Station. The case was registered under Sections 294(b), 387 and 506(ii) of Indian Penal Code. The detenu was remanded by the learned Judicial Magistrate, Ambasamudram, on 17 November, 2015.

3. The Detaining Authority was of the view that the detenu is likely to be released on bail in Crime Nos.164, 267 and 233 of 2015 and as such, with a view to prevent the commission of similar offences, a situation has arisen to detain him. Accordingly, the District Magistrate passed the detention order invoking the provisions of Tamil Nadu Act 14 of 1982.

4. The detention order is challenged by the petitioner on multiple grounds including non-application of mind. According to the petitioner, the detenu has not filed application for bail in Crime Nos.164, 267 and 233 of 2015 and as such, the observation made by the Detaining Authority that there is every chance of the detenu being released on bail has no basis.

5. The petition is opposed by the District Magistrate by filing counter. The District Magistrate referred to the earlier cases registered against the detenu and the ground case and accordingly, justified the impugned order of detention.

6. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondents.

DISCUSSION:

7. The detenu was involved in six adverse cases. The first case was registered by the Station House Officer, Gangaikondan Police Station, in Crime No.40 of 2015, under Sections 147, 148, 341, 294(b), 307 and 506(ii) of Indian Penal Code. The second case was registered by Veeravanallur Police Station in Crime No.66 of 2015 under Sections 294(b), 323 and 427 of Indian Penal Code. The remaining four cases were registered by Ambasamudram Police Station in Crime Nos.161, 162, 164 and 267 of 2015.

8. It is the case of the Detaining Authority that at about 17.00 hours on 15.11.2015, the detenu threatened the complainant with aruval and indulged in acts of terror in full view of the public. The police registered a case in Crime No.233 of 2015 under Sections 294(b), 387 and 506(ii) of Indian Penal Code. The detenu was arrested on 17 November, 2015. He was lodged at Central Prison, Karaikal, pursuant to the order passed by the learned Judicial Magistrate, Ambasamudram. The remand period would expire on 15 December, 2015. In the meantime, the Detaining Authority

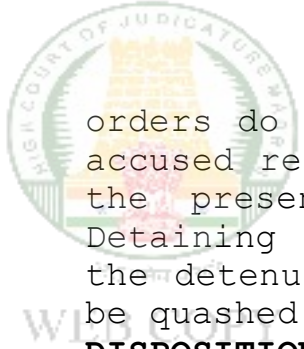
passed the order of detention on 08 December, 2015.

9. The Detaining Authority was fully aware that the detenu has not filed bail application in Crime Nos.164 and 267 of 2015 on the file of Station House Officer, Ambasamudram Police Station. The Detaining Authority also found that there was no bail application filed by the detenu in Crime No.233 of 2015 on the file of Kallidaikurichi Police Station. The Detaining Authority placed reliance on the order in Cr.M.P.No.3495 of 2014, whereby and whereunder, the learned Judicial Magistrate No.V, Tirunelveli, granted bail to an accused, by name, Ramar alias Karadi Ramar. According to the Detaining Authority, the case registered against Ramar alias Karadi Ramar was identical and as such, there is a real possibility of the detenu coming out on bail in Crime No.164 of 2015. The Detaining Authority also placed reliance on a bail order in Cr.M.P.No.60 of 2014, on the file of learned Judicial Magistrate No.V, Tirunelveli. In the said case, bail was granted to accused Kanthavel alias Kanthan. The Detaining Authority placed reliance on another bail granted to an accused, by name Periyadurai, in Cr.M.P.No.4377 of 2012, on the file of learned Judicial Magistrate No.3, Tirunelveli. The bail granted in those three cases were taken as the basic materials to arrive at a satisfaction that there is a likelihood of the detenu coming out on bail in the case registered against him by the police in Crime Nos.164, 267 and 233 of 2015.

10. There is no dispute that the detenu has not filed any bail application in the pending proceedings against him. The bail granted by the learned Judicial Magistrate No.V, Tirunelveli, to Ramar alias Karadi Ramar, in Cr.M.P.No.3495 of 2014, Kanthavel alias Kanthan, in Cr.M.P.No.60 of 2014 and by the learned Judicial Magistrate No.3, Tirunelveli, to Periyadurai, in Cr.M.P.No.4377 of 2012, were relied on to arrive at a satisfaction with regard to the possibility of the detenu coming out on bail. Those three cases have no similarity with the case registered against the detenu.

11. 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.

12. In the subject case, the bail orders in Cr.M.P.No.3495 of 2014 and Cr.M.P.No.60 of 2014 and Cr.M.P.No.4377 of 2012, were taken as the basis to arrive at a satisfaction that the detenu in all probability would be released on bail. Admittedly, those bail



orders do not relate to the co-accused in the very same case. The accused released in those cases 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.

DISPOSITION:

13. In the result, the impugned Detention Order, passed by the second respondent, in his proceedings in M.H.S.Confdl.No.139/2015, dated 08.12.2015, is quashed. The detenu, namely, Nagarajan, S/o.Karuthapandi, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

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

JA-DB/SAR.II/6.7.2016/4p:6C

Order made in
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