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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2016

CORAM :

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN**

and

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

Habeas Corpus Petition (MD) No.228 of 2016

K.Saraswathi

... Petitioner

Vs.

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

2.The Principal Secretary to Government,  
Home Prohibition and Excise (xiv) Department,  
Secretariat,  
Chennai 9.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records from the first respondent in M.H.S.Confdl No. 02/2016 dated 10.01.2016 by setting aside the said order of detention passed by the first respondent and setting the detenu Kali, aged 60 years S/o. Adivetti at liberty now detained in the Central Prison, Palayamkottai.

For Petitioner : Mr.V.Kathirvelu,  
Senior Counsel for  
Mr.K.Prabhu

For Respondents : Mr.C.Ramesh,  
Additional Public Prosecutor.

ORDER

(Order of the Court was made by **R.MAHADEVAN, J**)

The petitioner is the wife of the detenu, namely, Kali, aged 60 years, son of Adivetti, who has been detained under the Tamil Nadu Act 14 of 1982 by the order of the first respondent, in his proceedings in M.H.S.Confdl No. 02/2016 dated 10.01.2016, branding him as a 'Boseveta', taking note of the ground case in Crime No.152 of 2015 on the file of Puliyarai Police Station, registered for the alleged offence punishable under Sections 341, 294(b), 506(ii)



I.P.C. and also the following adverse cases:

- (i) Cr.No.80/2015 on the file of Puliyarai Police Station for the offence under Sections 429, 294(b) and 506(i) I.P.C. and
- (ii) Cr.No.123/2015 on the file of Puliyarai Police Station for the offence under Sections 279, 338 and 304(A) I.P.C. altered into Sections 120(B) and 302 I.P.C.

Challenging the same, the petitioner is before this Court with this Habeas Corpus Petition.

2. We have heard the learned Senior Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Though several grounds have been raised in this petition, the learned Senior Counsel appearing for the petitioner would mainly focus his argument on the ground that the subjective satisfaction arrived at by the Detaining Authority that there was every real possibility for the detenu to come out on bail is not based on any material. Moreover, the detaining authority referred to a bail order in a different case when no bail application was pending as on the date of the order of detention in the ground case. The said comparison to express subjective satisfaction is against the dictum of the Hon'ble Supreme Court consisting of three Hon'ble Judges in **Rekha Vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244** and also the judgment of a Division Bench of the Madras High Court in **H.C.P[MD].No.1154 of 2015**, dated **11.08.2015** [**Chandrakala Vs. The Secretary to Government**] and thus, the detention order is liable to be set aside. This, according to the learned Senior Counsel appearing for the petitioner is totally baseless and reflecting the total non-application of mind of the Detaining Authority.

4. Despite several opportunities given, no counter affidavit is forthcoming on the side of the respondents. Also, the learned Additional Public Prosecutor is not in a position to dispute the above fact. However, he submitted that though there is no bail application pending, the subjective satisfaction of the Detaining Authority has also to be looked into.

5. We have considered the above said submissions and perused the materials available on record.

6. Regarding the subjective satisfaction of the detaining authority as to the real possibility of the detenu coming out on bail in the ground case, the detaining authority made the following observation:

<https://hcservices.ecourts.gov.in/hcservices/> I am aware that the bail was granted to Thiru.Kali before the Judicial Magistrate, Shenkottai in CRMP.No.6766/2015 on 01.07.2015 in



Puliyarai Police Station Crime Number 80/2015. I am also aware that the sponsoring Police officer has stated that Thirumathi.Saraswathi wife of Thiru.Kali is taking action to take out her husband on bail by filing a bail application for Puliyarai Police Station Crime Numbers 123/2015 and 152/2015. I am aware that he has not filed any bail application so far in Puliyarai Police Station Crime Number 123/2015. I am also aware that **there is real possibility** of his coming out on bail in future by filing bail application for the above case since in similar cases bails are granted by the appropriate courts. I am also aware that in a similar case bail has been granted to Kumar in CRMP.No.373/2012 dated 07.02.2012 by the Principal Sessions Court, Tirunelveli. I therefore infer that there **is real possibility** of his (Thiru.Kali) coming out on bail in Puliyarai Police Station Crime Number 123/2015, since bails are granted by the appropriate courts in such cases. I am aware that Thiru.Kali is in remand in Puliyarai Police Station Crime Number 152/2015 and in this case he has not filed any bail application so far. I am also aware that **there is real possibility** of his coming out on bail in future by filing bail application for the above case since in similar cases bails are granted by the appropriate courts. ...."

7.It is an admitted fact that no bail application was filed by the detenu in the ground case and the same was also taken note of by the detaining authority. When no bail application is pending, the detaining authority could refer to a bail granted to a co-accused in the same case to express the subjective satisfaction of the real possibility of the detenu coming out on bail. Only in case a bail application is pending, the detaining authority can refer to a similar case in which bail was granted to the accused therein, in support of his subjective satisfaction regarding the real possibility of the detenu coming out on bail. It has been held so by a Division Bench of the Madras High Court in **H.C.P.No.1154 of 2015, dated 11.08.2015 [Chandrakala Vs. The Secretary to Government]**, following the judgment of the Hon'ble Supreme Court consisting of three Hon'ble Judges in **Rekha Vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244**, which position was clarified by a Division Bench of the Hon'ble Supreme Court consisting of two Hon'ble Judges in **Huidrom Konungjao Singh Vs. State of Manipur and others** reported in **(2012) 7 SCC 181**.

8. Hence, we come to the conclusion that the subjective satisfaction expressed by the detaining authority regarding the real possibility of the detenu coming out on bail in the ground



case to justify the clamping of the order of detention, while the detenu was in custody as a remand prisoner, can be termed "ipse dixit" not supported by cogent materials. On that ground alone, the order of detention is liable to be set aside.

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9. In the result, the impugned detention order passed by the first respondent, detaining the detenu, namely, Kali, son of Adivetti, aged 60 years, made in M.H.S.Confdl.No.02/2016, dated 10.01.2016, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-  
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,  
Prohibition and Excise (xiv) Department,  
Fort Saint George, Chennai 9.
- 2.The District Collector and  
District Magistrate, Tirunelveli District,  
Tirunelveli.
- 3.The Superintendent,  
Central Prison, Palayamkottai,  
Tirunelveli District.  
(In Duplicate for communication to detenu)
- 4.The Joint Secretary to Government,  
Public(Law and Orders),  
Fort Saint George, Chennai-9
- 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to Mr.K.Prabhu,Advocate Sr.No.26827  
sms/rsb  
AA/PEK/SAR-II/01.06.2016/4p-8c

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