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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.05.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

and

THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P (MD) No.277 of 2016

Kanagaraj

.. Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Virudhunagar District,
Virudhunagar.

3.The Superintendent of Prison,
Madurai Central Prison
Madurai District.

.. 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 in detention order passed in Detention Order Cr.M.P.No.3 of 2016, dated 20.02.2016 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu by name Kanagaraj, S/o.Kanagarathinam, aged about 23 years, detained in Central Prison, Madurai, before this Court and set him at liberty forthwith.

For petitioner : Mr.R.Alagumani

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.**]

The petitioner is the detenu. The detenu has been detained by the second respondent by his order in Cr.M.P.No.3 of 2016, dated 20.02.2016, 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.66 of 2016 registered on the file of Sivakasi Town Police Station for offence punishable under Section 392 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 tranquillity 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.



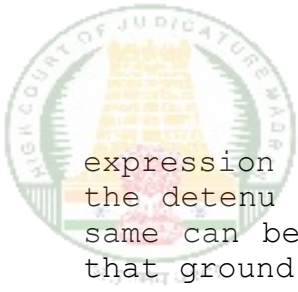
3. Though the order of detention is assailed on several grounds, the learned counsel for the petitioner submits that the non-application of mind on the part of the Detaining Authority is apparent from Paragraph No.6 of the grounds of detention, wherein the subjective satisfaction of the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case came to be expressed.

4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. The relevant part of the Paragraph No.6 in the grounds of detention is re-produced hereunder:-

"6. I am aware Thiru.Kanagaraj has been remanded to judicial custody upto 19.02.2016 and lodged in Central Jail, Madurai in connection with Sivakasi Town Police Station in Cr.No.66/16. The ground case in Cr.No.66/16 was registered against the accused u/s 392 I.P.C. In this case, the accused Thiru.Kanagaraj filed bail petition before the Judicial Magistrate Court, Sivakasi in Cr.M.P.No.1577 of 2016 dated 16.02.16 and it was pending. In a similar section of case in Cr.No.259/12 u/s.392 I.P.C registered against the accused Thiru.Prabhu at Sivakasi East Police Station, the Principal Sessions Court, Srivilliputhur granted bail to the accused vide Cr.M.P.No.4110/2013 dated 05.08.2013. Hence, I infer that there is a real possibility of his coming out on bail by filing bail petition by the accused in the ground case before the concerned court or in the higher court, in future, since bails are granted by the court in such cases. Eventhough Thiru.Kanagaraj has been arrested for committing offence and released on bail in the two adverse cases, he continuously committing offences without mending his ways. Hence, I further infer that if he comes out on bail, he will, further, indulge in such activities in future, which will be prejudicial to the maintenance of public order and public peace and further that the recourse to normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order."

6. The highlighted portion will show that the Detaining Authority did not apply his mind and he has made an observation which is meaningless. It is so nebulous, as it cannot be ascertained from the said part of the grounds of detention as to whether any bail application was pending or a bail application was going to be filed. The very absurd language used therein will show total non-application of mind on the part of the Detaining Authority. Apart from the above, the learned counsel for the petitioner also submits that already, a bail application was pending. Hence, on the ground of non-application of mind, the



expression of subjective satisfaction regarding the real possibility of the detenu coming out on bail in the ground case stands vitiated and the same can be termed as *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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7. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the Order of Detention dated 20.02.2016, made in Cr.M.P.No.3 of 2016, passed by the second respondent, the District Collector and District Magistrate, Virudhunagar District, and directs the release of the detenu, by name Kanagaraj, aged about 23 years, S/o.Kanagarathinam, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/

Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar

To:

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Virudhunagar District,
Virudhunagar.
3. The Superintendent of Prison,
Madurai Central Prison
Madurai District.(in duplicate communicate to the detenu)
4. The Joint Secretary to Govt.,
Public (Law & Order),
Madurai Bench of Madras High Court, Madurai.
5. The Director General of Police,
Chennai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.R.Alagumani, Advocate in SR.No.26284

ORDER MADE IN
H.C.P (MD) No.277 of 2016
17.05.2016

vs

PA/KBM/SAR I/01.06.2016/3P/9C