



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2016

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**THE HONOURABLE MR. JUSTICE S. NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE M. V. MURALIDARAN**

HCP(MD).Nos.301 and 302 of 2016

HCP(MD) No. 301 of 2016

Velusamy

.. Petitioner

Versus

1. State of Tamil Nadu, rep. by
The Secretary to Government,
Public (Law & Order - F), Department,
Fort St. George,
Chennai-600 009.

2. The District Collector and
District Magistrate,
O/o. The District Collector and
District Magistrate,
Ramanathapuram District,
Ramanathapuram.

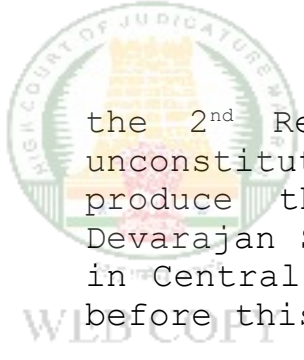
3. The Superintendent,
Central Prison,
Madurai.

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

.. Respondents

(R4 impleaded as per order of this Court
made in Cr1.MP(MD)No.6768/2016
in HCP(MD)No.301/2016 dated 11.8.2016)

Prayer:- Habeas Corpus Petition filed under Article 226 of the
Constitution of India praying for a writ of Habeas Corpus by
calling for the records pertaining to the impugned order of
detention vide Cr.M.P.No.01/NSA/2016 dated 29.01.2016 passed by



the 2nd Respondent herein and quash the same as illegal and unconstitutional and consequently direct the Respondents to produce the body or person of the Petitioner's son namely Devarajan S/o Velusamy, Male, aged about 22 years, who is confined in Central Prison, Madurai under the control of the 3rd Respondent before this Court and set him at liberty.

HCP(MD)No.302 of 2016

Guruvammal

.. Petitioner

Versus

1. State of Tamil Nadu, rep. by
The Secretary to Government,
Public (Law & Order - F), Department,
Fort St. George,
Chennai-600 009.
 2. The District Collector and
District Magistrate,
O/o. The District Collector and
District Magistrate,
Ramanathapuram District,
Ramanathapuram.
 3. The Superintendent,
Central Prison,
Madurai.
 4. The Secretary to Government of India,
Ministry of Home Affairs,
Department of Internal Security,
North Block,
New Delhi - 110 001.
- (R4 impleaded as per order of this Court
made in CrI.MP(MD)No.6769/2016
in HCP(MD)No.302/2016 dated 11.8.2016)

.. Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus by calling for the records pertaining to the impugned order of detention vide Cr.M.P.No.02/NSA/2016 dated 29.01.2016 passed by the 2nd Respondent herein and quash the same as illegal and unconstitutional and consequently direct the Respondents to produce the body or person of the Petitioner's husband namely Bala @ Parambai Bala @ Balakrishnan, S/o Malaiyandi, Male, aged about 41 years, who is confined in Central Prison, Madurai under the control of the 3rd Respondent before this Court and set him at liberty.



For Petitioners : Mr.R.Rajkumar
(In both HCPs)

For Respondents : Mr.R.Rajaratnam, (for R1 to R3)
(In both HCPs) Public Prosecutor
Assisted by Mr.T.Mohan, APP
Mr.C.Nanda Gopal (for R4)
CGSC

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COMMON ORDER

[Order of the Court was made by M.V.MURALIDARAN, J.,]

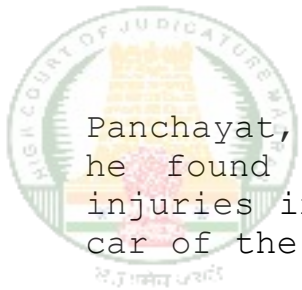
Since the order of detention is passed by the 2nd Respondent District Collector and District Magistrate of Ramanathapuram District based on a case in Crime No. 140 of 2015 for the offence under section 341, 302 of IPC r/w 3 of TNPPDL Act altered into 147,148,120(B), 409,341,201 and 302 of IPC and 3 of TNPPDL Act, both the HCPs are heard together and the common order is passed as follows:

As for as HCP (MD) No. 301/16 is concerned that the petitioner namely Velusamy has filed the writ of Habeas Corpus on behalf of his son namely Deverajan confined in the Central Prison, Madurai, the order under challenge is in Cr.M.P.No. 01/NSA/2016 dated 29.01.2016.

As for as HCP (MD) No. 302 of 2016 is concerned, it is filed by one Guruvammal on behalf of her husband namely Bala @ Parambai Bala @ Balakrishnan who is also confined in the Central Prison, Madurai, as against the order of detention vide Cr.M.P.No.2/NSA/2016 dated 29.01.2016 passed by the 2nd respondent.

2.The prayer in both the HCP is to call for the records pertaining to the impugned orders of detention vide Cr.M.P.Nos. 01 and 02/NSA/2016 dated 29.01.2016 passed by the 2nd respondent and to quash them as illegal and direct the respondents to produce the body or person of the detenus respectively.

3.The case of the petitioners in the both HCP is that one Kuppusamy son of Chellasamy belongs to Puthukulam village, Muthukaluthur Taluk, Ramanathapuram District lodged a complaint before the Inspector of Police, Paramakudi Taluk Police Station on 24.11.2015 at about 8.00 am. The said Kuppusamy in his complaint stated that his son-in-law namely Ramesh got married with his daughter and blessed with a male child aged about 7 months old. His son-in-law is the Secretary of the Youth Wing in Barathiya Janatha Party and was running a chicken shop. Followed by a cell phone call from the village President of South Pothuvakudi



Panchayat, the said Kuppusamy rushed to the occurrence spot where he found that his son-in-law was murdered by inflicting stab injuries indiscriminately on his face, head and limbs. Further the car of the deceased was also damaged.

4. By receiving the complaint from the said Kuppusamy, the aforesaid case was registered on 24.11.2015 at about 8.00 am. On investigation, it was revealed that followed by previous enmity between the Detenu Devarajan (H.C.P.No.301 of 2016) was arrested on 25.11.2015 and was remanded into Judicial Custody on 26.11.2015. His remand was periodically extended till 04.02.2016. The bail petition filed on behalf of the said Detenu Devarajan in Crl.M.P.No. 169 of 2016 before the learned Principal District and Sessions Judge, Ramanathapuram was dismissed.

5. On the other hand the Detenu in HCP No. 302 of 2016 namely Bala @ Parambai Bala @ Balakrishnan surrendered before the learned Judicial Magistrate No. I Tirunelveli on 29.12.2015 and periodically his remand was extended. However, the bail petition filed on his behalf in Crl.M.P.No. 148 of 2016 before the learned Sessions Judge, Ramanathapuram was dismissed on 19.01.2016 but the 2nd bail application on behalf of the Detenu was filed in Crl.M.P.No. 238 of 2016 dated 28.01.2016 is pending before the concerned Court.

6. The 2nd respondent has passed the detention order saying that as he found that the activities of the Detenus are prejudicial to the security of the State, Sovereignty of India and prejudicial to the maintenance of public order, he exercised the powers conferred upon him by sub-section 2 of section 3 of National Security Act, 1980.

7. Further in the grounds of detention, the 2nd respondent has stated that he perused the relevant documents available in the booklet of police records and came to know that the Detenus acted in a manner prejudicial to the maintenance of public order and detrimental to the communal harmony between Adi-Dravidar and Maraver communities and National Security of India.

8. That the order of the detention is passed followed by the registration of single case under the Indian Penal Code, but the detenus have been detained under the National Security Act. So, this court has scrutinized all the materials available on records including the detention order, grounds of detention, statement of witnesses and all other records pertaining to the investigation of the case in Crime No. 140 of 2015.

9. Before going to the merits of the case, this court has referred section 3 of the National Security Act, 1980, Act No. 65 of 1980. The said provision contemplates as follows:



Section 3. Power to make orders detaining certain person-(1) the Central Government or the State Government may,

(a) If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or

(b) If satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

It is necessary to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

10. The said section empowers the Central Government or the State Government may if satisfied with respect to any person in order to preventing him acting in any manner prejudicial to the defence of India, the relation of India with foreign powers, or the security of India. So, from the aforesaid section, it is clear that a person may be detained under the National Security Act in order to prevent him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers and of the security of India. Now let us take the case on hand based on that the Detenus are detained under the National Security Act, 1980. Though, it is for the trial court concerned to go into the merits of the case to find out the truth, but at the same time as the 2nd respondent has clamped the detention order followed by the registration of single case as against the detenu, it is for this court to peruse all the relevant materials in respect of the case in Crime No. 140 of 2015 of the file of the Inspector of Police, Paramakudi Taluk Police station. In the said case as many as statement of 17 witnesses has been recorded in addition to that the confessional statements of the Detenus are also filed. The careful scrutiny of the statement of witnesses recorded under section 161 (3) of Cr.P.C., and the confessional statement of the Detenus would show that the registration of the aforesaid case has absolutely no nexus with the security of sovereign of the state in any manner as contemplated under section 3 of the National Security Act.

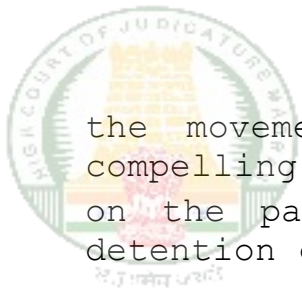


11. Further the Counsel for the petitioner would submit that the detaining authority has not stated as to how the registration of the aforesaid criminal case is prejudicial to the defence of India, the relations of India with foreign powers and the Security of India. Further, he also pointed out the registration of the aforesaid criminal case has no way connected to invoke the provisions of National Security Act.

12. On the other hand the learned Additional Advocate General assisted by the Additional Public Prosecutor has submitted that the order of detention is justifiable. At the same time, he is unable to point out that followed by the registration of the aforesaid criminal case how the public order and tranquility of the locality was disturbed. Moreover, the counter affidavit filed by the 2nd respondent has not disclosed that followed by the registration of the aforesaid criminal case the security of the state was put in danger. In the absence of such indictments, it is unjustifiable to detain a person under the National Security Act.

13. Apart from that it is the prime duty of the 2nd respondent to come up with a clear case and to explain the compelling necessity to clamp the Detenus under the National Security Act. Though the 2nd respondent has stated that he has perused the relevant documents available in the booklet of police records, he did not say that he applied his mind to come to an irresistible conclusion that the Detenus acted in a manner prejudicial to the maintenance of public order and detrimental to the communal harmony between two community by touching the National Security and Sovereign of India. So, this court has no hesitation to come to a conclusion that the registration of the aforesaid criminal case in Crime No. 140 of 2015 on the Paramakudi Taluk Police Station has no nexus with the provisions of National Security Act.

14. Further, the detention is under the National Security Act. If a person is detained under the said act, his constitutional right to movement is curtailed. So, the detaining authority has to take independent decision and to ascertain the compelling necessity to detain the detenus under the National Security Act. Further, from the affidavit filed by the 2nd respondent and from the contention of the detention orders, this court finds that the 2nd respondent has not applied his mind independently to the documents furnished by the Sponsoring Authority, nowhere, the 2nd respondent has stated that he has applied his mind to materials furnished by the Sponsoring Authority. As far as the application of mind is concerned, it is not an empty formality, but it must be an act of assessment of the materials by the human mind with the documents furnished upon him in order to curtail the movement of citizen of this country. The Constitution of India emphasizes that



the movement of a citizen shall not be curtailed unless the compelling and reasonable cause. So, the non-application of mind on the part of the 2nd respondent would definitely affect the detention order to the extent of its vitiation.

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15. That the learned Counsel for the petitioner also urges this Court that the pre-detention representation sent by him to the respondents has not been properly considered. But, here there is no pre-detention is found which was sent by the petitioner to the respondents. Hence that ground cannot be considered. Further, according to the learned counsel for the petitioners that the pendency of the bail petition filed on behalf of the detenus are not taken by the detaining authority into consideration and for that reason, the detention order is to be set-aside. As this court has already come to the conclusion that the non-application of mind on the part of the 2nd respondent would affect the order of detention, it is not necessary to go into the other grounds raised by the petitioners.

16. Since the order of detention is passed based on a single criminal case that too when the said case is having no nexus touching the Security and Sovereignty of India, this Court has no option other than to allow the Habeas Corpus Petitions filed on behalf of the Detenus. In view of the factual as well as legal consideration the order passed by the 2nd respondent in detaining the detenus under the National Security Act are hereby set-aside and the detenus of both the case are set at liberty.

17. In the result, both the Habeas Corpus Petitions are allowed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Public (Law and Order-F) Department,
Fort St. George, Chennai-600 009.
2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Ramanathapuram District,
Ramanathapuram.



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

4. The Superintendent,
Central Prison,
Madurai.

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

+ 2 CC TO Mr.P.RAJKUMAR, ADVOCATE IN SR No. 54540, 54541

VSA/SKN

TE/RR : 28/03/2017 : 8P/8C

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