



WEB COPY

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.337 of 2016

Tamilarasi

... Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St., George,
Chennai 600 009.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the detention order in Cr.M.P.No. 44/2015 dated 31.12.2015 passed by the 2nd respondent and set aside the same by setting the detenu namely Sathiya, Son of Palaniyandi aged about 32 years now detain at Central Prison, Trichy in T.P.D.A. No. 7489 / 01.01.2016 and set the detenu at liberty.

For Petitioner : Mr.V.Illanchezian
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, Sathya, aged 32 years, son of Palaniyandi, who has been detained under the Tamil Nadu Act 14 of 1982 by the order of the second respondent, in his proceedings in Cr.M.P.No.44/2015, dated 31.12.2015, branding him as a 'Goonda', taking note of the ground case in Crime No.321 of 2015 on the file of Thottiyam Police Station, registered for the alleged offence punishable under Sections 147, 148, 341, 302 r/w 120(b) I.P.C. and also the following adverse cases:

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

(i) Cr.No.149 of 2014 on the file of Thottiyam Police Station,

for the offence under Sections 147, 148, 324 I.P.C. altered into Sections 147, 148, 341, 294(b), 323 and 324 I.P.C.

(ii) Cr.No.191 of 2015 on the file of Thottiyam Police Station, for the offence under Sections 294(b), 307 and 506(ii) I.P.C.

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

2. Though this matter stood adjourned to 03.06.2016, it has been listed before this Court as per the Special Criminal Division Bench sitting arrangements during Vacation Holidays and by consent of either side, this matter is taken up for disposal.

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

4. Though several grounds have been raised in this petition, the learned 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.

5. Despite time granted, no counter affidavit is forthcoming on the side of the respondents so far. Also, the learned Additional Public Prosecutor is not in a position to dispute the above fact.

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

7. 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 Thiru.Sathya, s/o Palaniyandi is in remand in Thottiyam PS Cr.Nos.149/2014 and 321/2015 and have not filed any



bail applications so far. In a similar case registered in Kumbakonam West PS Cr.No.331/2014, bail was granted to Mathan @ Mathankumar @ Manikandan by the Principal Sessions Judge, Thanjavur in Cr.M.P.No.4654/2014 on 23.12.2014. Hence there is a real possibility of his (Sathya) coming out on bail by filing bail applications in the above cases before the appropriate court. ..."

8. 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.

9. 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.

10. In the result, the impugned detention order passed by the second respondent, detaining the detenu, namely, Sathya, son of Palaniyandi, aged 32 years, made in Cr.M.P.No.44/2015, dated 31.12.2015, 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 (CS-I)

/True copy/



To

1. The Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St., George, Chennai 600 009.
2. The District Collector and
District Magistrate, Trichirappalli District,
Trichirappalli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Superintendent,
Central Prison, Trichirappalli.
5. The Joint Secretary to Government
Public (Law & Order),
Fort.St.George, Chennai-9.

+1 CC to Mr.V.ILLANCHEZIAN, Advocate, SR No.26839

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sms/rsb

SH/NGM-MP/SAR-III:02.06.2016:4P/7C