



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.344 of 2016

Murugan

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District
Magistrate, Kanyakumari District at,
Nagercoil.

3.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, calling for the records connected with the detention order of the 2nd Respondent in P.D.No. 05/2016 dated 15.02.2016 and quash the same and direct the Respondents to produce the body or person of the detenu namely Varunkumar @ Varun @ Kosumuttai S/o. Murugan aged 25 years now detained in Central Prison Palayamkottai Tirunelveli District before this Honourable Court and set him at liberty.

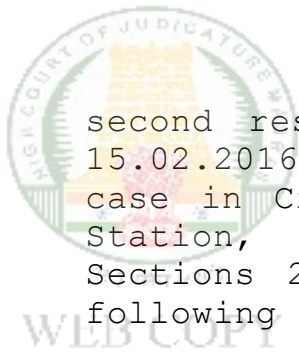
For Petitioner : Mr.L.George Paul Anto

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

ORDER

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

<https://hcservices.e-governance.gov.in/hcservices>
The petitioner is the father of the detenu, namely, Varunkumar @ Varun @ Kosumuttai, son of Murugan, aged 25 years, who has been detained under the Tamil Nadu Act 14 of 1982 by the order of the



second respondent, in his proceedings in P.D.No.05/2016, dated 15.02.2016, branding him as a 'Goonda', taking note of the ground case in Crime No.35 of 2016 on the file of Aralvaimozhi Police Station, registered for the alleged offence punishable under Sections 294(b), 307, 323, 427 and 506(ii) I.P.C. and also the following adverse cases:

(i) Cr.No.1315 of 2012 on the file of Kottar Police Station, for the offence under Sections 147, 148, 341, 307 and 302 I.P.C.

(ii) Cr.No.669 of 2015 on the file of Suchindrum Police Station, for the offence under Sections 147, 148, 341, 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 23.06.2016, 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.

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



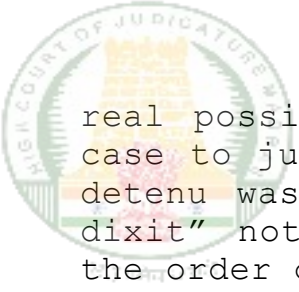
7. Regarding the subjective satisfaction of the detaining authority as to the real possibility of the detenu coming out on bail in the ground case, the detaining authority made the following observation:

"4. I am aware that Thiru.Varunkumar @ Varun @ Kosumuttai was arrested on 19.01.2016 at 10.30 hrs at Viswasapuram bus stop and duly produced before the Judicial Magistrate, Boothapandy on the same day at 05.25 hrs and remanded upto 02.02.2016 and lodged at District Jail, Nagercoil and his remanded period has been extended upto 16.02.2016. I am also aware that so far no bail application was filed on his behalf in any of the court. In a similar case registered in Nesamony Nagar Police Station in Cr.No.2/2016 u/s 294(b), 307, 506(ii) I.P.C., the accused Thiru.Rajasekar was released on condition bail on 12.01.2016 in CrI.M.P.No.8/2016 in the court of District and Sessions Judge, Kanniyakumari Division at Nagercoil. (The order in CrI.M.P.No.8/2016 dated 12.01.2016 of the Court of District and Sessions Judge, Kanniyakumari District at Nagercoil is enclosed along with the typed set of papers.) Hence I infer that since bail is granted in such cases by the courts, it is very likely that he may file bail application in future in the lower court or higher court and there is a real possibility that Thiru.Varunkumar @ Varun @ Kosumuttai may come out on bail. ..."

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**.

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

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, Varunkumar @ Varun @ Kosumuttai, son of Murugan, aged 25 years, made in P.D.No.05/2016, dated 15.02.2016, 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(CS-I)

/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, Kanyakumari District at, Nagercoil.
- 3.The Superintendent,
Central Prison,
Palayamkottai, Tirunelveli District.
4. The Joint Secretatry to Government,
Public (Law & Order), Fort St., George,
Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SDR/SKS-RR/SAR II/02.06.2016/4P/6C

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