



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

H.C.P (MD) No.364 of 2016

Anitha : Petitioner
Vs.

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

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

3.The Inspector of Police,
Cheranmahadevi Police Station,
Tirunelveli District.
(Cr.No.38/2016).

4.The Superintendent,
Central Jail,
Palayamkottai,
Tirunelveli District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the records pertaining to the proceedings in M.H.S.Confdl.No.28/2016, dated 12.03.2016 on the file of the second respondent and quash the detention order against the petitioner's husband Jeyaraj, S/o.Chellappandi, aged 31 years and direct the release of her husband from the Central Jail, Palayamkottai and set at liberty.

For Petitioner : Mr.P.Ramasamy

For Respondents : Mr.A.Ramar,
Additional Public Prosecutor



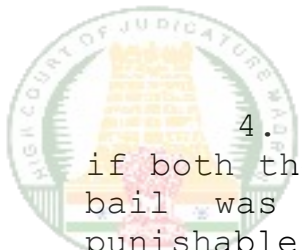
O R D E R

[Order of the Court was made by K.K.SASIDHARAN, J.]

The District Collector and District Magistrate, Tirunelveli, passed an order of detention, detaining Thiru.Jeyaraj, the husband of the petitioner, invoking the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982), by order dated 12 March, 2016. The said order is challenged primarily on the ground that there was no subjective satisfaction arrived at by the District Magistrate with regard to the possibility of the detenu coming out on bail and committing similar offences in future. The husband of the petitioner, by name Jeyaraj, was involved in a case in Crime No.147 of 2015 on the file of Cheranmahadevi Police Station. The police registered a case against him under Section 379 of Indian Penal Code and Section 21(1)(iv) of Mines and Minerals (Development and Regulation) Act. The detenu was, thereafter, arrested by the police on 08 March, 2016 on allegation of theft of sand and attacking the police personnel. The case was registered under Sections 379, 353, 307 of Indian Penal Code and 21(1)(iv) of Mines and Minerals (Development and Regulation) Act. The District Magistrate, on a perusal of the report submitted by the police, passed an order of detention. The said order is challenged by the petitioner, who is the wife of the detenu.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondents.

3. The detenu came to the adverse notice of the Detaining Authority, in view of his involvement in the case in Crime No.147 of 2015 on the file of Cheranmahadevi Police Station. The police registered a case for theft of sand invoking the provisions of the Indian Penal Code and Mines and Minerals (Development and Regulation) Act. The subsequent crime registered by the Cheranmahadevi Police Station in Crime No.38 of 2016 is projected as the ground case to detain the detenu. The ground case was registered against the detenu under Sections 379, 353 and 307 of Indian Penal Code and 21(1)(iv) of Mines and Minerals (Development and Regulation) Act. The detenu was arrested on 08 March, 2016. He was remanded upto 22 March, 2016. According to the District Magistrate, the detenu filed a bail application in respect of the ground case before the Principal Sessions Court, Tirunelveli, in Cr.M.P.No.1369 of 2016. The bail application is pending. The learned District Magistrate indicated in his order that in a similar case, bail was granted to the detenu in Cr.M.P.No.4968 of 2015 by the Principal Sessions Court, Tirunelveli. The order was passed on 22 August, 2015. The learned District Magistrate was, therefore, of the opinion that there is every chance that the detenu would be released on bail in the ground case.



4. The order passed by the District Magistrate proceeds as if both the cases are similar in nature. The earlier case, wherein bail was granted to the petitioner, relates to sand theft punishable under Section 379 of Indian Penal Code and 21(1)(iv) of Mines and Minerals (Development and Regulation) Act. The police registered the ground case under Sections 379, 353, 307 of Indian Penal Code and 21(1)(iv) of Mines and Minerals (Development and Regulation) Act. The case registered by the police under Section 379 of Indian Penal Code in Crime No.147 of 2015 cannot be compared with the subsequent case in Crime No.38 of 2016 involving serious offences, like 353 and 307 of Indian Penal Code.

5. The factual matrix clearly indicates that the District Magistrate arrived at a subjective satisfaction with regard to the imminent possibility of the detenu coming out on bail without any cogent material.

6. In **Rekha Vs. State of Tamil Nadu, [2011 (5) SCC 244]**, the Hon'ble Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

7. The Detaining Authority proceeded as if the Sessions Court would grant bail to the detenu even in a case relating to the commission of offence under Section 307 of Indian Penal Code. The District Magistrate erred in comparing the earlier case registered under Section 379 of Indian Penal Code with the subsequent case registered under various provisions including 307 of Indian Penal Code. We are, therefore, of the view that the District Magistrate failed to demonstrate that there is every likelihood of the detenu coming out on bail, so as to detain him in order to prevent from indulging in similar acts, which are prejudicial to the maintenance of public order and public health under the provisions of Tamil Nadu Act 14 of 1982.

8. In the result, the impugned Detention Order, passed by the second respondent, in his proceedings in M.H.S.Confdl.No.28/2016, dated 12.03.2016, is quashed. The detenu, namely, Jeyaraj, S/o.Chellappandi, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

9. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(Record)

/True copy/



To

1.The Principal Secretary to Government,
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2.The District Collector and
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4.The Superintendent,
Central Jail,
Palayamkottai,
Tirunelveli District.

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

6.The Superintendent of Police,
Tirunelveli District.

sml/nb

sm:SKS-RR:30.06.2016:4P/7C

Order made in
H.C.P (MD) No.364 of 2016
Dated:
20.06.2016