



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE Ms. JUSTICE V.M. VELUMANI

H.C.P (MD) No. 738 of 2016

Paulmayandi @ Ootha

.. Petitioner

Vs.

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

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

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

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records connected with the detention order passed in M.H.S. Confdl No.59/2016 dated 27.05.2016 on the file of the 2nd Respondent herein and Quash the same and direct the Respondents to produce the detenu or body of the detenu namely Paulmayandi @ Ootha S/o. Esakki aged about 25 years detained at Central prison Palayamkottai before this Honourable Court and set him at liberty forthwith.

For petitioner : Mr. N. Pragalathan

For respondents : Mr. P. Mohan

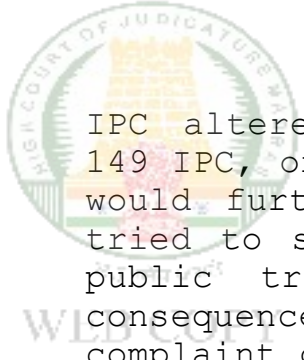
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M. SATHYANARAYANAN, J.**]

The petitioner is the detenu. Challenging the legality of the Detention Order, this Habeas Corpus Petition is filed.

2. As per the grounds of detention, the detenu came to adverse notice in Thalaiyuthu Police Station in Crime No.45/2013 for offences under Sections 147, 148, 341, 342, 302, 506(ii) and 149 IPC and in Crime No.341 of 2015 for offences under Sections 302



IPC altered 147,148,294(b),341,120(B),302,114 IPC and read with 149 IPC, on the very same Police Station. The grounds of detention would further read that the detenu as well as his associates, tried to steal money from the *de facto* complainant and when the public tried to intervene, they were threatened with dire consequences by them and in this regard, on the basis of a complaint given by one Devaraj, a case in in Crime No.75/2016 was registered by Thalaiyuthu Police Station under Sections 294(b), 342,387,506(ii) IPC and the detenu was arrested on 02.04.2016 and he was produced before the learned Judicial Magistrate No.III, Tirunelveli and remanded to judicial custody at Central Prison, Palayamkottai.

3. The Detaining Authority, on the basis of the materials placed before him, has arrived at subjective satisfaction that there is an imminent possibility of the detenu coming out on bail in the ground case and accordingly, clamped the order of detention and passed the Order of detention.

4. The learned Counsel for the petitioner has drawn the attention of this Court to Paragraph No.6 of the grounds of detention and would submit that in order to arrive at subjective satisfaction for an imminent possibility of coming out on bail and the detenu would indulge in similar kind of offences, the Detaining Authority has placed reliance upon the order dated 26.04.2013 passed in the bail petition in CrI.OP(MD).No.7350 of 2013, filed by him, in which, bail was granted to him. However, insofar as the second adverse case as well as the ground case are concerned, the detenu is yet to file bail application. Though the Detaining authority would state that there is a real possibility of the detenu coming out on bail in future by filing bail application, no material, whatsoever, has been placed in the bookelet to arrive at subjective satisfaction. Hence, the impugned order warrants interference.

5. Learned Additional Public Prosecutor would submit that the Detaining Authority with due and proper application of mind, has passed the Order of detention and prays for dismissal of the Habeas Corpus Petition.

6. This Court heard the rival submissions of the parties and perused the materials placed before this Court.

7. On a careful perusal of the materials placed before this Court, the detenu, in the ground case as well as in the second ground case, is yet to file bail application. But, the same is not reflected in the grounds of detention nor no materials have been placed by the Detaining Authority to the effect that the detenu or his friend or his relatives are taking steps to file bail application in those cases to come out on bail. In the absence of such materials, the subjective satisfaction arrived



at by the Detaining Authority is vitiated and it warrants interference.

8. In the result, the Habeas Corpus Petition is allowed and this Court set aside the Order of Detention made in M.H.S.Confdl No.59/2016, dated 27.05.2016, on the file of the second Respondent and direct the respondents to release the detenu, namely, Paulmayandi @ Ootha, son of Esakki, aged about 25 years, now detained at Central prison, Palayamkottai, and set him at liberty forthwith, if his continued custody is not authorised in specific cases or by any other detention order.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To:

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

+1 CC to M/s.N.PRAGALATHAN, Advocate, SR No.57981

H.C.P (MD) No.738 of 2016
03.10.2016

ssm

SH/EM-MPA:19.10.2016:2P/7C