



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MRS.JUSTICE NISHA BANU

H.C.P(MD)No.838 of 2016

Sugan

: Petitioner

Vs.

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kanyakumari District at Nagercoil.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
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 entire records, connected with the detention order of the second respondent in P.D.No.35/2016, dated 23.06.2016 and quash the same and direct the respondents to produce the detenu, namely, Sugan S/o.Suyambuselvan, aged about 23 years detained in Palayamkottai Central Prison before this Court and set him at liberty forthwith.

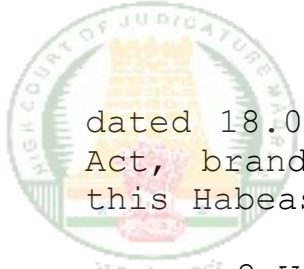
For Petitioner : Mr.R.Alagumani

For Respondents : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by R.SUBBIAH, J.]

This Habeas Corpus Petition is filed by the detenu - Sugan, who is under detention, pursuant to the order passed by the second respondent dated 23.06.2016, in P.D.No.35/2016, under Section 2(f) 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), read with the order issued by the Government in G.O.(D).No.85, Home Prohibition and Excise (XVI) Department,



dated 18.04.2016, under Sub-Section (2) of Section 3 of the said Act, branding him as "Goonda". The said order is challenged in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.

3. The main submission of the learned counsel for the petitioner is that the Detaining Authority, without properly applying his mind and without arriving at the subjective satisfaction, mechanically passed the impugned order. The learned counsel for the petitioner, in this regard, invited the attention of this Court to Paragraph No.4 of the detention order, which reads as follows:-

"I am aware that the accused Thin. Sukan was arrested on 08.06.2016 at 14.00 hrs., near Thiruninarkurichi Junction and duly produced before the Judicial Magistrate, Eraniel on the same day and remanded upto 22.06.2016 and lodged in District Jail, Nagercoil as a remand prisoner. His remand period was further extended upto 06.07.2016. Further, I infer that the accused Thin. Sukan is under judicial custody in Manavalak-urichi P.S. Cr.No. 14³/₂016 u/s. 341, 294(b), 323, 307, and 506(ii) IPC and a Anticipatory bail application in Cr1.0.P(MD) No. 913⁶/₂016 has been filed on his behalf in the Hon'ble Madurai Bench of Madras High Court on 09.06.2016 and the same was dismissed on 13.06.2016. In a similar case registered in Nesamony Nagar Police Station in Cr.No. 02²/₂016 u/s. 294(b), 307, 506(ii) IPC, the accused Thiru.Rajasekar was released on condition bail on 12.01.2016 in CrI.M.P.No. 08/2016 in the court of District and Sessions Judge, Kanniyakumari District at Nagercoil (The order in CRL.M.P.No.08/2016 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). Since bail is granted in such cases by the courts, the accused Thiru.Sukan may again file a bail application in the Hon'ble Madurai Bench of Madras High Court, there is real possibility that he may come out on bail. If the accused Thiru. Sukan comes out on bail he will indulge in such activities which would be prejudicial to the maintenance of public peace and public order. The recourse of normal criminal law would not give the desired effect of effectively preventing him from indulging in such activities. The pre-detention representation given by Thirumathi. Rejina, mother



of the accused Thiru. Sukan was duly considered by the District Collector, Kanniyakuman District and proper reply was sent on 20.06.2016 in C.No.C2/1974/2015, dated 20.06.2016".

4. A reading of Paragraph No.4 of the detention order would show that in a similar case, like that of the ground case in the present case, registered on the file of Nesamony Nagar Police Station, in Crime No.02 of 2016, under Sections 294(b), 307 and 506(ii) of the Indian Penal Code, the accused, namely, Thiru.Rajasekar was released on bail, on 12.01.2016, in CrI.M.P.No.08 of 2016, by the District and Sessions Judge, Kanyakumari District at Nagercoil. Hence, relying on the said bail order, the Detaining Authority has come to the conclusion that since bail was granted in a similar case, the accused - Thiru Sukan, may again file a bail application before the Madurai Bench of Madras High Court and there is real possibility that he may come out on bail.

5. It is the submission of the learned counsel for the petitioner that bail application cannot be filed directly before the High Court and the bail application would be entertained by the High Court, only in case the bail application filed by the accused is dismissed by the Court below. Thus, according to the learned counsel, the Detaining Authority, without applying his mind properly and without arriving at the subjective satisfaction, mechanically passed the impugned order of detention. The learned counsel for the petitioner, in support of his contention, makes reliance on an order passed by this Court in **Parvathi Vs. The Secretary to Government, [H.C.P.No.2045 of 2015, dated 27.01.2016]**, wherein in Paragraph No.6, it has been held as follows:-

"6.As evidenced from the Grounds of Detention, in particular, paragraph 4, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case [Cr.No.1600/2015] as well as in the adverse case [Cr.No.1598/2015], in which case bail applications were pending before the learned Principal District and Sessions Judge, Tiruvallur, in CrI.MP.Nos.1777/2015 and 2014/2015 respectively, by placing reliance on a similar case wherein, bail was granted to an accused in a case in Cr.No.301/2009 registered by R7 K.K.Nagar Police Station, by this Court in CrI.OP.No.13843/2009. Whenever a bail application in connection with any adverse case or ground case is pending before a lower Court and if the Detaining Authority arrives at the subjective satisfaction that the detenu would be granted bail in the said cases by placing reliance upon an order passed in a similar case, such order



should be one passed by a Court subordinate to the High Court and not the order of the High Court itself, as has been done in the instant case. That too, the similar case relied upon by the Detaining Authority relates to the occurrence of the year 2009 whereas the occurrence in the ground case is of the year 2015 and there is no proximity and live link between the ground case and the similar case relied upon, necessitating the Detaining Authority to arrive at the subjective satisfaction that there is likelihood of the detenu coming out on bail in the ground case. This is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the detention order is vitiated and liable to be quashed on this ground alone".

6. Applying the above dictum laid down by the Division Bench to the facts of the present case, we are of the considered view that the impugned detention order cannot be sustained and therefore, it is liable to be set aside.

7. In the result, the Detention Order, passed by the second respondent, in his proceedings in P.D.No.35/2016, dated 23.06.2016, is quashed. The detenu, namely, Sugan S/o.Suyambuselvan, aged about 23 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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

Sd/-

Assistant Registrar(Writ)

/True Copy/

Sub Assistant Registrar

NB

To

1.The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2.The District Collector and District Magistrate,

<https://hcservices.ecourts.gov.in/hcservices/>
Office of the District Collector and District Magistrate,
Kanyakumari District at Nagercoil.



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

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

JAM/23.12.16/MPA/5p-5c

ORDER MADE IN
H.C.P(MD)No.838 of 2016
Dated: 08.12.2016