



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

H.C.P(MD)No.234 of 2017

Kala

...Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Principal Secretary to Government
Home, Prohibition and Excise Department,
Fort St. George, Chennai.

2.The District Collector & District Magistrate,
Kanyakumari District

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

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the 2nd respondent P.D.No.03/2017 dated 04.01.2017 and quash the same and direct the respondents to produce the detenu namely Prakash, S/o.Manikandan, aged about 22 years now detained at Central Prison, Palayamkottai before this Court and set him at liberty.

For Petitioner : Mr.D.Venkatesh

For Respondents : Mr.C.Mayilvahana Rajendran, A.P.P.

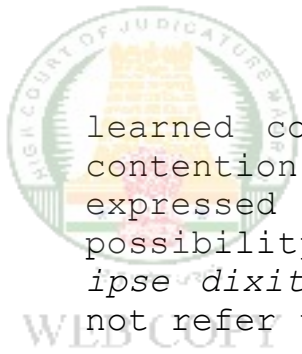
O R D E R

[Order of the Court was made by M.V.MURALIDARAN, J.]

The petitioner is the wife of the detenu. The detenu has been detained by the 2nd respondent by order dated 04.01.2017, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge 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.Though many grounds have been raised in the petition, the



learned counsel appearing for the petitioner has restricted his contention by contending that the subjective satisfaction expressed by the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case is *ipse dixit* not supported by cogent materials insofar as it does not refer to any similar case particulars.

4. The learned Additional Public Prosecutor on behalf of the respondents would refute the submissions made by the learned counsel for the petitioner.

5. The Detaining Authority, in the grounds of detention, while expressing subjective satisfaction regarding the imminent possibility of the detenu coming out on bail in the ground case made the following observations:-

"5. I am aware that the accused Thiru.Prakash was arrested formally on 21.11.2016 at 6.45 hrs., in District Jail, Nagercoil and duly produced before the Judicial Magistrate No.II, Nagercoil on 24.11.2016 at 11.55 hrs., on P.T.Warrant and remanded upto 08.12.2016 and lodged in District Jail, Nagercoil as a ramand prisoner. His remand period was last extended till 05.01.2017. Further I infer that the accused Thiru.Prakash is under judicial custody in (i) Nesamony Nagar P.S.Cr.No.539/2016 u/s.341, 294(b), 307, 506(ii) IPC and Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (ii) Vadasery P.S.Cr.No.483/2016 u/s.457, 380 IPC, (iii) Vadasery P.S. Cr.No.457,380 Ipc. So far as the ground case is concerned, in a similar case registered in Suchindram Police Station in Cr.No.637/2015 u/s.147, 294(b), 506(ii) IPC r/w 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, the accused Thiru.Ahamed was released on condition bail on 27.11.2015 in CrI.M.P.No.3523/2015 dated 11.01.2016 in the Court of Sessions, Kanniyakumari Division at Nagercoil.(The copy of the order in CrI.M.P.No.3523/2015 dated 27.11.2015 of the court of Sessions, Kanniyakumari Division at Nagercoil is enclosed with the typed set of papers.) "

6. The above said observation, as rightly contended by the learned counsel for the petitioner, shows the pre-determination of mind on the part of the Detaining Authority that the bail petition filed before the High Court will be allowed in any event without reference to the similar case in which bail came to be granted. On that score alone, the order of detention is liable to be set aside.



7. In the result, the Detention Order, passed by the 2nd respondent, in his proceedings in P.D.No.03/2017 dated 04.01.2017 is quashed. The detenu, namely, Prakash, son of Manikandan, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-
Assistant Registrar(A.S)

/True Copy/

Sub Assistant Registrar

To

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

RR

JS/RSK/SAR.2/21.2.2017/3P-6C

ORDER MADE IN
H.C.P(MD)No.234 of 2017
Dated:23.05.2017