

**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.243 of 2017

Tmt.Chandra

...Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Home, Prohibition and Excise(xiv) Department,
Secretariat, Chennai - 600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil,
Kanniyakumari District.
3. The Superintendent, Central Prison,
Palayamakottai, Tirunelveli.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, directing the respondents to produce the person or body of petitioner's husband detainee namely K.Ramesh aged about 36 years, son of Kadarkaraiyaandi before this Court, who is now detained in the Central Prison, Palayamakottai, in pursuant to the detention order passed by the second respondent in P.D.No.85/2016, dated 19.12.2016 and to call for the records and quash the same and release the detainee at liberty forthwith.

For Petitioner	: Mr.N.Dilip Kumar
For Respondents	: Mr.C.Mayil Vahana Rajendran, Additional Public Prosecutor.

O R D E R

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

The petitioner is the wife of the detenu Ramesh. The detenu has been detained by the second respondent by order dated 19.12.2016, 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. The contention raised by the learned counsel appearing for the petitioner is that the detenu was remanded on 22.10.2016 in Pallivilai Police Station. It is also stated by the learned counsel for the petitioner that it is stated in the Detention Order that there is a real possibility of the detenu coming out on bail by filing bail application without enclosing other relevant documents is a vitiating circumstance and the Detention Order passed cannot be sustained.

3. The learned Additional Public Prosecutor submitted that the detaining authority has rightly appreciated the facts in the grounds of detention.

4. We have considered the said submissions.

5. This Court in HCP (MD) No. 979 of 2011 dated 14.12.2011, considered the very issue in paragraph Nos. 13 and 14 and held thus:

"13. Even though the Detaining Authority had stated, in the grounds of detention, that there is an imminent or a real possibility of the detenu coming out on bail, there is nothing available on record to substantiate such a claim. Unless, there are sufficient and cogent materials for the Detaining Authority to arrive at his conclusion that there is an imminent or a real possibility of the detenu coming out on bail and indulging in activities, which would be prejudicial to the maintenance of public order, the conclusion of the Detaining Authority would be a mere ipse dixit and as such, the conclusion arrived at by the Detaining Authority cannot be held to be valid in the eye of law.

14. Further, unless, the similar cases referred to by the Detaining Authority, in the grounds of detention, are comparable with the cases relating to the detenu, in all aspects, it would not be open to the Detaining Authority to arrive at his conclusion that the detenu would be enlarged on bail. In the present case, it has not been shown that all the relevant materials relating to the similar cases, referred to by the Detaining Authority had been furnished to the detenu, in order to enable him to make an effective representation against the detention order. The failure of the Detaining Authority to furnish all the materials would, no doubt, cause substantial prejudice to the detenu, resulting in the failure on the part of the Detaining



Authority in following the mandate, enshrined in Clause (5) of the Article 22 of the Constitution of India."

6. In a similar case, bail has been granted and the detenu is likely to be released on bail in the pending bail application. There is no material available before the detaining authority to arrive at such a conclusion. The Supreme Court in the decision reported in 2011 (4) SCC 260 (Rekha v. State of Tamil Nadu) held that in the absence of material particulars in similar cases the detaining authority shall not rely on the said statement made by the sponsoring authority.

7. In the Judgment above referred also the Supreme Court and this Court considered the very issue. It has not been shown that the relevant materials relating to similar case referred to by the detaining authority has been furnished to the detenu in order to enable him to make an effective representation against the Detention Order. The failure of the detaining authority to furnish all the materials would cause substantial prejudice to the detenu, resulting in the failure on the part of the detaining authority in following the mandate, enshrined in Clause (5) of the Article 22 of the Constitution of India.

8. In the light of the said undisputed facts and the decisions of this Court and the Hon'ble Supreme Court stated supra, the Detention Order passed against the detenu is liable to be set aside. Accordingly, the Detention Order dated 19.12.2016 is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George, Chennai - 600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District at Nagercoil, Kanniyakumari District.
3. The Superintendent, Central Prison, Palayamkottai, Tirunelveli.



4. The Joint Secretary to Government,
Public (Law and Order),
Fort Saint George,
Chennai-9.

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

+1cc to M/S. N.DILIPKUMAR, Advocate, SR.No.57160.

ORDER MADE IN
H.C.P (MD) No.243 of 2017
Dated:
23.05.2017

SDS/JC/SAR 4/01.06.2017/4P/7C