



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2017

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CORAM:

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

H.C.P(MD)No.270 of 2017

Malarkodi

... Petitioner/Detenu's wife

Vs.

1. The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai - 600 009.

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

3. The Superintendent of Prison,
Central Prison, Madurai.

... 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 detenu namely Prabhu aged about 42 years, son of Raju Thevar before this Court, who is now detained in the Central Prison, Madurai, in pursuant to the detention order passed by the second respondent in No.02/2017/C3, dated 05.01.2017(TPDA No.6133/2017, dated 06.01.2017) and to call for the records and quash the same and release the detenu at liberty forthwith.

For Petitioner : Mr.D.Veera Sekaran
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.]



holding him to be a "Drug Offender", as contemplated under Section 2(e) 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, learned counsel appearing for the petitioner has restricted his contention by contending that there is no real possibility for the detenu to come out on bail.

4. While referring to the order of detention passed by the detaining authority, the learned counsel for the petitioner, referred to paragraph - 5 of the order of detention, wherein the detaining authority would state that in this case, bail has been granted to co-accused. Therefore, there is a real possibility of the detenu coming out on bail. This according to the learned counsel appearing for the petitioner is bereft of particulars without cogent materials, which vitiates the impugned order of detention. In support of his contention, he relies on the judgment of the Hon'ble Apex Court reported in **2012 (7) Supreme Court Cases 181 (Huidrom Konungjao Singh v. State of Manipur)**.

5. The learned Additional Public Prosecutor on behalf of the respondents would submit that the order of detention has been passed in due consideration of fact and law with a view to curtail his prejudicial activities and to maintain public order, and therefore, it does not warrant interference by this Court.

6. As rightly contended by the learned counsel for the petitioner that in this case, bail has been granted to co-accused and the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail would be a mere *ipse dixit* and that would vitiate the order of detention. It is trite law that when no bail application is pending, then it is only a logical conclusion that there is no likelihood of the person in custody would be released on bail. If that be so, there are no cogent materials available before the detaining authority to come to the satisfaction that there is real possibility of the detenu coming out on bail. This would be indicative of the non-application of mind and it is only an expression of the impression made by the authority without any material whatsoever. Therefore, the impugned order is passed on mere *Ipse-dixit* and the order of detention cannot be sustained in the eye of law. In this connection, it is useful to refer the judgment of the Hon'ble Apex Court relied on by the learned counsel for the petitioner reported in **2012 (7) Supreme Court Cases 181** (cited supra), wherein the Hon'ble Apex Court has held



as follows:

"12. In ***Rekha v. State of T.N.*** ((2011) 5 SCC 244) this Court while dealing with the issue held: (SCC pp.250-51 & 254-55, paras 7, 10 & 27)

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'... 27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground."

(emphasis added)""

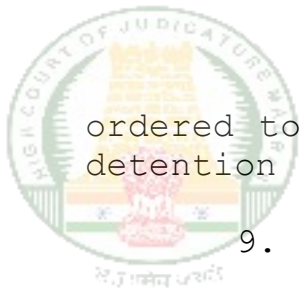
Thus, it is evident from the aforesaid judgment that it is not the similar case i.e., involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

.....

15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any had been enlarged on bail, resorting to the provisions of the Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eye of the law".

7. In the light of the above fact and law, we have no hesitation in quashing the order of detention passed by the detaining authority.

8. In the result, the Detention Order, passed by the second ~~session judge~~ in this proceedings in Detention Order No.02/2017/C3, dated 05.01.2017 (TPDA No.6133/2017, dated 06.01.2017) is quashed. The detenu, namely, Prabhu, son of Rasu Thevar, aged 42 years 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.

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Sd/-
Assistant Registrar ()

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
State of Tamilnadu,
Home, Prohibition and Excise Department,
Fort. St. George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Theni District, Theni.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

PMU

TE/RSK/SAR-I : 02/06/2017 : 4P/5C

ORDER MADE IN
H.C.P (MD) No.270 of 2017
Dated:23.05.2017