



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.285 of 2017

Basheer Ahamed

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Principal Secretary to Govt.,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-9.
2. The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Thanjavur District, Thanjavur.
3. The Superintendent,
Central Prison,
Tiruchirappalli,
Tiruchirappalli 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 impugned order of detention made in P.D.No.05/2017 dated 17.01.2017 on the file of the District Collector and District Magistrate, Thanjavur District the 2nd Respondent herein branding the detenu by name Basheer Ahamed aged about 33 years, S/o.Abdullah as Goonda, who is now confined in Central Prison, Tiruchirappalli and quash the impugned order of detention and set him at liberty by producing him before this Honourable Court.

For Petitioner
For Respondents

: Mr.A.Thiruvadi Kumar
: Mr.C.Ramesh, A.P.P.

O R D E R

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

The petitioner is the detenu himself. The detenu has been detained by the 2nd respondent in P.D.No.05/2017 dated 17.01.2017, 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, learned counsel appearing for the petitioner has restricted his contention by contending that there is a total non application of mind on the part of the detaining authority in referring to the bail application filed by the detenu.

4. While referring to the order of detention passed by the detaining authority, the learned counsel for the petitioner, referred to paragraph - 4 of the order of detention, wherein the detaining authority would state that the bail application filed by the detenu was dismissed by the Sessions Judge on 02.01.2017, but in Paragraph No.4 of the order, it is stated that the wife of the detenu is taking action to take out her husband / detenu on bail and the fact remains that the detenu has already filed an application before this Court for bail and the same is pending, which, according to the learned counsel appearing for the petitioner is bereft of particulars without cogent materials and 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 respondent concerned 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, the detenu filed a bail application before the Sessions Judge and the same was dismissed and subsequently, he has approached this Court for bail, which is now pending and the subjective satisfaction arrived at by the detaining authority in Paragraph No.5 that the wife of the detenu has been taking action to bail him out and there is real possibility of coming out on bail would be a mere ipse dixit and that would vitiate the order of detention. This would be indicative of the non-application of mind and it is only an expression of the impression made by the authority. 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)

'... 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 respondent in P.D.No.05/2017 dated 17.01.2017, is quashed. The ~~detenu~~ Basheer Ahamed, S/o. Abdullah, 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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/True Copy/

Sd/-
Assistant Registrar(AE)

Sub Assistant Registrar

To:

1. The Principal Secretary to Govt.,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St.George, Chennai-9.
2. The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Thanjavur District, Thanjavur.
3. The Superintendent,
Central Prison,
Tiruchirappalli,
Tiruchirappalli District.
4. The Joint Secretary to Government,
Public (Law & Order) Dept,
Secretariat, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.A.Thiruvadi Kumar, Advocate SR.No. 57038

H.C.P(MD)No.285 of 2017
23.05.2017

Ar/er
JM/JC/SAR 3/02.06.2017/3P/7C