



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.(MD) No.429 of 2017

S.Maheswari

... Petitioner

-VS-

- 1.The State of Tamil Nadu,
rep. by Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kanyakumari District,
Nagercoil.
- 3.The Superintendent,
Central Prison,
Palayamkottai.
- 4.The Inspector of Police,
Vadasery Police Station,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the 2nd Respondent in Detention Order P.D.No.10/2017 dated 10.02.2017 and quash the same and direct the Respondents to produce the body or person of the detenu, Alexander @ Alex, aged 30 years, son of Esaac, before this Hon'ble Court and set him at liberty, now detained at Central Prison, Palayamkottai.

For Petitioner : Mr.S.Mahendrapathy

For Respondents : Mr.C.Ramesh

Additional Public Prosecutor

O R D E R

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

The petitioner is the sister of the detenu, namely, Alexander @ Alex, son of Esaac, Male, aged about 30 years. The detenu has been detained by the second respondent by his order in P.D.No.10/2017 dated 10.02.2017, 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 appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. The learned counsel appearing for the petitioner would submit that so far no bail application has been filed by the petitioner in respect of the ground case and adverse cases 3 and 4. However, the detaining authority by relying on a similar case like the ground case registered at Nesamani Nagar Police Station Crime No.2 of 2016 u/s 294(b), 307 and 506(ii) has come to the conclusion that there is real possibility of the detenu coming out on bail. According to the learned counsel, the facts involved in the said case is different to that of the ground case and adverse cases 3 and 4.

5. Per contra, the learned Additional Public Prosecutor while reiterating the averments in the counter affidavit would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner.

6. Considering the submissions made on both sides, we are of the view that there is non-application of mind on the part of the detaining authority in passing the order. Admittedly, in the ground case and adverse cases 3 and 4 no bail application has been filed so far. If that be so, 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 a 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. Further, the facts involved in the case relied on by the detaining authority as a similar case to ground case are totally different. In such view of the matter, the impugned detention order is liable to be quashed.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.S.No.10 of 2017 dated 10.02.2017, passed by the second respondent is set aside. The detenu, namely, Alexander @ Alex, son of Essac, aged about 30 years, is directed



to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Kanyakumari District,
Nagercoil.
- 3.The Superintendent,
Central Prison,
Palayamkottai.
- 4.The Joint Secretary to Government,
Public (Law and Order)
Fort Saint George, Chennai-9
- 5.The Inspector of Police,
Vadasery Police Station,
Kanyakumari District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Sj

RL/7C/3P/JC/SAR1/19/7/2017

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