



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.05.2017
CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
H.C.P(MD)No.80 of 2017

Govindan

: Petitioner

Vs.

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
St. Fort George,
Chennai - 600 009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City,
Tirunelveli.

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

: Respondents

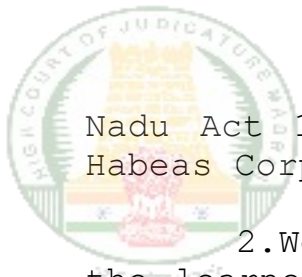
PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order of the respondent No.2 in No.1/BCDFGISSSV/2017 dated 04.01.2017 and quash the same and direct the respondents to produce the body or person of the detenu by name Govindan, son of Natarajan, aged about 28 years now detained at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner	: Mr.R.Alagumani
For Respondents	: Mr.C.Ramesh, Additional Public Prosecutor.

O R D E R

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

The petitioner is the detenu - Govindan, aged about 28 years. The detenu has been detained by the second respondent by his order in No.1/BCDFGISSSV/2017 dated 04.01.2017, holding him to be a "Boot-Legger", as contemplated under Section 2(b) of Tamil



Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

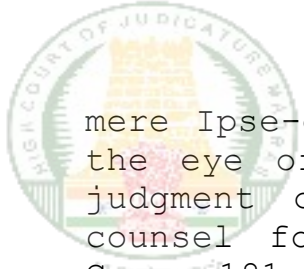
2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though many grounds have been raised in the petition, learned counsel appearing for the petitioner has restricted his contention only in respect of non-application of mind on the part of the detaining authority in arriving at the subjective satisfaction before passing the order of detention.

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 it is specifically stated that the bail application filed in the ground case before the District and Sessions Judge, Tirunelveli in Cr.M.P.No.5589 of 2016 is pending and the detaining authority would state that in similar cases, bail has been granted to another accused in another crime number. 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 while reiterating the averments made in the counter affidavit filed on behalf of the second respondent 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, when the bail application of the petitioner is pending in the ground case and 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. Merely stating that steps have been taken on behalf of the detenu, that too, only in the ground case is not sufficient to pass an order of detention. In the ground case, admittedly, bail application of the petitioner is pending. 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)

'... 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



8. In the result, the Detention Order, passed by the second respondent, in his proceedings in No.1/BCDFGISSSV/2017 dated 04.01.2017, is quashed. The detenu, namely, Govindan, son of Natarajan, aged about 28 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.

Sd/-

Assistant Registrar (C)

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
St. Fort George,
Chennai - 600 009.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Tirunelveli City,
Tirunelveli.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

PS/SSL

PSM/JC/SAR3/24.05.2017/4P/6C

ORDER MADE IN
H.C.P(MD)No.80 of 2017
Dated:16.05.2017