



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:06.03.2018

Coram :-

THE HON'BLE DR.JUSTICE S.VIMALA

and

THE HON'BLE MRS.JUSTICE T.KRISHNAVALLI

Habeas Corpus Petition No.1719 of 2017

Kuthupdeen

... Petitioner

-vs-

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

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

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

... Respondents

Prayer: Writ petition under Article 226 of the Constitution of India is filed praying for issuance of a writ of Habeas Corpus, calling for the records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in Detention Order No.85/2017 dated 10.11.2017 in detaining the detenu under Section 2(f) of the Tamil Nadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the detenu, namely, Jaffer Ali, S/o.Samsudeen, male aged about 40 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty.

For petitioner	: Ms.C.R.Ponnuthai
For respondents	: Mr.V.Neelakandan
	Addl. Public Prosecutor

O R D E R

(Order of the Court was made by **S.Vimala,J.,**)

The petitioner is the brother of the detenu. The detenu has been branded as a "Goonda" as contemplated under Tamil Nadu Act 14 of 1982 and detained under order of the 2nd respondent passed in Detention Order No.85/2017 dated 10.11.2017. The said order is under challenge in this petition.



2. Even though the learned counsel for the petitioner has raised several grounds to assail the order of detention, he has mainly focused his argument on the ground that in Paragraph No.5 of the detention order, the detaining authority states that the detaining authority is satisfied that the detenu Jaffer Ali is acting in a manner prejudicial for the maintenance of public order and as such, he is a Goonda as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

3. The learned counsel for the petitioner would submit that when the bail application is pending, the detaining authority has passed an order stating that the detenu is likely to come out on bail by filing a bail application. He would further submit that while the bail application is already pending before the Sessions Judge, the question of filing another bail application does not arise, which shows the non application of mind on the part of the detaining authority and on this ground, the detention order is liable to be quashed.

4. In support of his submission that the order passed without application of mind is liable to be set aside, learned counsel cited a judgment of this Court in the case of S.Sathiya vs. State (H.C.P.(MD) No. 466 of 2013) decided on 03.07.2013, wherein it has been held as under:

"6. On a careful scrutiny of the impugned order, it is seen that the detaining authority, taking into account the imminent possibility of petitioner being enlarged on bail and the likelihood of the same is prejudicial to the public order and health, has passed the impugned detention order. It is pertinent to note here that when the bail petition filed by the detenu is pending before the learned Special Judge for E.C.Act Cases, how the detaining authority has taken a decision to detain a person without applying his independent mind, which really shows the lethargic attitude on the part of detaining authority. Further, the failure on the part of detaining authority to consider the possibility or otherwise of the detenu being granted bail in adverse cases would also reflect non application of mind. Thus, for the reasons stated herein-above, the impugned detention order cannot be sustained and is vitiated in law."

5. The learned Additional Public Prosecutor would contend that there is a compelling necessity to detain the petitioner in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of public order and public health.

<https://hcservices.ecourts.gov.in/hcservices/>

6. The detaining authority, in paragraph No.5 of the detention order, has stated as follows:



"..... In connection with Keeranur Police Station Cr.No.254/2017 u/s. 392, 397 and 506(ii) IPC, accused Jaffer Ali filed bail petition before the Court of Judicial Magistrate, Palani, vide Cr.M.P.No.7817/2017 and the same was dismissed on 06.11.2017. Further, he filed bail petition before the Court of District Principal and Sessions Judge, Dindigul vide Cr.M.P.No.2406/2017 and the same is pending. In a similar case, ie., in Cr.No.57/2015 u/s.392 r/w 397, 506(ii) IPC of Palani Taluk Police Station, which is unrelated to the accused Jaffer Ali, the Court of Judicial Magistrate, Palani granted bail to the accused namely, Raevan vide Cr.M.P.No.3237/2015 on 20.04.2015. Hence, I infer that there is a real possibility of his (Jaffer Ali) coming out on bail by filing bail petition before the same or higher Court. If he comes out on bail, he will indulge in such further activities which will be prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Jaffer Ali is a "Goonda" and there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982."

7. Under similar set of circumstances, this Court has already held that while the bail application is pending before the Sessions Judge, the order that the detenu would likely to come out on bail would amount to non application of mind and on this sole ground, the detention order is liable to be set aside.

8. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order dated 10.11.2017 passed in Detention No.85/2017, by the second respondent, detaining the detenu, namely, Jaffer Ali, S/o.Samsudeen, male, aged 40 years, who is detained in the Central Prison, Madurai, is hereby quashed. The above named detenu is ordered to be set at liberty forthwith, unless his custody 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,
Secretariat, Chennai-9.
 2. The District Magistrate and District Collector
Dindigul District, Dindigul.
 3. The Superintendent of Prison,
Central Prison, Madurai.
 4. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.
 5. The Director General of Police,
Egmore, Chennai.
- +1. CC to M/S.C.R.Ponnuthai, Advocate SR.No.53104

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06.03.2018

RR

MKV-PM-PN-SAR 3/6.3.2018/4P-8C