



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.10.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P(MD)No.1349 of 2018

Nazar Ali

: Petitioner

Vs.

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District,
Dindigul.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Inspector of Police,
Dindigul Town South Police Station,
Dindigul.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the records connected with the detention order in Detention Order No.78/2018 dated 05.09.2018 on the file of the Respondent No.2 and quash the same as illegal and direct the respondents to produce the body or person of the petitioner namely Nazar Ali aged about 23 years, S/o.N.K.Mohammed, now confined at Central Prison, Madurai before this Court and set him at liberty forthwith.

For Petitioner

: Mr.S.M.A.Jinnah

For Respondents

: Mr.K.Dinesh Babu

Additional Public Prosecutor.

O R D E R

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

The petitioner is the detenu - Nazar Ali, aged about 23 years, S/o.N.K.Mohammed. The detenu has been detained by the second respondent by his Detention Order in Detention Order No.78/2018, dated 05.09.2018, holding him to be a "Goonda", as contemplated under Section of 2(f) Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.



2. Though the detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that in the ground case, the bail application filed by the detenu in Cr.M.P.No.3628 of 2018 was dismissed on 04.08.2018 by the learned Judicial Magistrate No.III, Dindigul, but, still the detaining authority expressed subjective satisfaction that there was a real possibility of the detenu coming out on bail in the ground case and the said subjective satisfaction is nothing but *ipse dixit* not supported by cogent materials.

3. In elaboration of the said contention, the learned counsel for the petitioner submits that the subjective satisfaction regarding the real possibility of the detenu coming out on bail in a case, wherein the bail application filed by the detenu was dismissed, cannot be based on any other case in respect of other persons and that the very fact that no bail application is pending will negate the imminent possibility of the detenu coming out on bail, subject to an exception that a co-accused in the very same case placed under similar circumstances has been released on bail.

4. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

5. As rightly contended by the learned counsel for the petitioner, the Detaining Authority referred to the fact that the bail application filed by the detenu was dismissed in the ground case, namely, Crime No.363 of 2018, registered on the file of Dindigul Town South Police Station. However, the Detaining Authority proceeded further to express a subjective satisfaction that there was real possibility of the detenu coming out on bail by filing a bail application. Such subjective satisfaction arrived at by the Detaining Authority shows total non-application of mind. Thus, on this sole ground alone, the impugned detention order is liable to be set aside.

6. In the result, the Detention Order, passed by the second respondent, in his proceedings in Detention Order in Detention Order No.78/2018, dated 05.09.2018, is quashed. The detenu, namely, Nazar Ali, aged about 23 years, S/o.N.K.Mohammed, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

7. The Habeas Corpus Petition shall stand allowed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.
2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
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Dindigul.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Inspector of Police,
Dindigul Town South Police Station,
Dindigul.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Ns

VB/pm/SAR1/07.12.2018/3P/7C

ORDER MADE IN
H.C.P(MD)No.1349 OF 2018
Dated: 30.10.2018