



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P.(MD)No.250 of 2019

Oottaiyan @ Malairajan

: Petitioner

Vs.

1.The Additional Chief Secretary to Government
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate
Madurai - 625 020

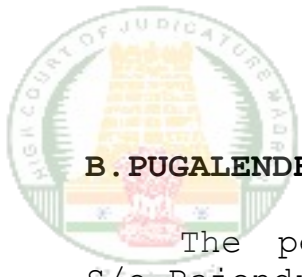
3.The Superintendent of Prison
Madurai Central Prison,
Madurai District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records, connected with the detention order of the respondent No.2 in No.BCDFGISSSV No.1/2018 dated 04.04.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Oottaiyan @ Malairajan son of Rajendiran, aged about 23 years, now detained at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor

**ORDER****B. PUGALENDHI, J**

The petitioner is the detenu viz., Oottaiyan @ Malairajan, S/o.Rajendran, aged about 23 years. The detenu has been detained, as per the order of the second respondent, dated 04.04.2018, under Section 2(f) of the Tamil Nadu Act 14 of 1982, branding him as "GOONDA". Challenging the same, the petititioner/detenu is before this Court in this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner/detenu and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

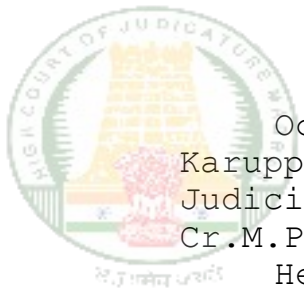
3.When the matter was taken up for consideration, among other grounds, the learned counsel for the petitioner, by inviting the attention of this Court to Paragraph No.5 of the detention order, submitted that the Detaining authority, while arriving at a subjective satisfaction, has observed that the bail application filed by the detenu before this Court is pending and after having observed that the bail application is pending, again, the detaining authority, while arriving at a subjective satisfaction in the very same Paragraph, stated that he has satisfied that in the ground case, there is a real and imminent possibility of the detenu coming out on bail, since in similar case, bail was granted. However, the detaining authority has not whispered about the possibility of coming out on bail in the third and fourth adverse case, though the bail application is pending in the third and fourth adverse cases and therefore, it would show that the order was mechanically passed without application of mind, which would vitiate the detention order.

4. We have heard the learned Additional Public Prosecutor appearing for the State and perused the records carefully.

5. In Paragraph No.5 of the detention order, it is stated as follows:

"5.I am aware that Oottaiyan alias Malairajan has been remanded to judicial custody by Judicial Magistrate Court No.2, Madurai, in connection with the case of Oomachikulam Police Station Cr.No.56/18, u/s.397, 506(ii) IPC and he is a remand prisoner and lodged in Central Prison, Madurai till 26.02.2018. His remand was lastly extended upto 09.04.2018.

The accused Oottaiyan alias Malairajan has filed bail application in Oomachikulam Police Station Cr.No.56/18 vide Cr.M.P.No.806/18 on 19.03.185 before JM-V Court and the above bail petition was dismissed on 22.03.2018 by the court. Further, he filed bail petition vide Cr.M.P.No.1681/18 dated 27.03.2018 in Principal Sessions Court, Madurai District and the same is pending before the court.



Oottaiyan alias Malairajan has obtained bail in Karuppayurani PS Cr.No.253/15 u/s 387 IPC case from Judicial Magistrate Court No.2, Madurai vide Cr.M.P.No.7080/15 dated 18.12.15.

He obtained bail in Karuppayurani PS Cr.No.306/17 u/s 341, 294(b), 324, 307 IPC r/w 3(1)(r), 3(1)(s), 3(2)(v) of SC/ST Act case from Madurai District Additional Court (PCR) vide Cr.M.P.No.2276/17 dated 30.11.2017.

In Karuppayurani PS Cr.No.20/18 u/s 294(b), 324, 307 IPC r/w 4 of TNWH Act and Silaiman PS Cr. No.53/18 u/s 341, 387, 506(ii) IPC cases, PT warrant issued and produced before the J.M.Court No.II, Madurai, on 08.03.18 and the cases are under investigation.

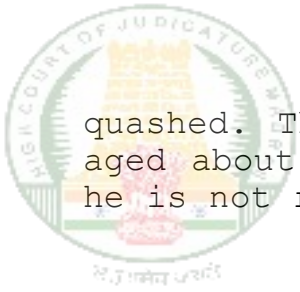
In a similar case registered in Sellur Police Station in Cr.No.196/2018, u/s.392 r/w 397 and 506(ii) IPC, bail was granted to the accused 1) Ranjithkumar @ Mookurinji Ranjithkumar, 2) Thennarasu, 3)Virumandi by the Principal Sessions Judge, Madurai, vide Cr.M.P.Nos.971, 995 and 1041/2018 dated 23.02.2018.

Therefore, there is a real possibility of Oottaiyan alias Malairajan coming out on bail in ground case in Oomachikulam Police Station Cr.No.56/18 u/s 397, 506(ii) IPC. Hence, I infer that it is very likely of him coming out on bail in the ground case.

If the said accused Oottaiyan alias Malairajan comes out on bail, it is most likely of him indulge in such activities, which will be prejudicial to the maintenance of public order and public tranquility. Further, the recourse to the normal criminal law will not have the desired effect of effectively preventing him from indulging in activities prejudicial to the maintenance of public order. On perusal of materials placed before me, I am satisfied that the said accused Oottaiyan alias Malairajan, who is a Goonda and there is compelling necessity to detain him under the section 2(f) of the Tamil Nadu Act 14 of 1982, in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of public order."

6. We find some force in the submission made by the learned counsel for the petitioner that when the bail application is pending in the ground case, the detaining authority has not whispered about the possibility of coming out on bail by the detenu in the third and fourth adverse cases, though bail applications were pending in the said adverse cases. However, the detaining authority has stated that in the ground case, there is a likelihood of the detenu coming out on bail. On this ground, the detention order is liable to be set aside.

7. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in No.BCDFGISSSV No.1/2018, dated 04.04.2018, is



quashed. The detenu, namely Oottaiyan @ Malairajan, S/o.Rajendran, aged about 23 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

RR

To

- 1.The Additional Chief Secretary to Government
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate
Madurai - 625 020
- 3.The Superintendent of Prison
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government of Tamil Nadu,
Public (Law & Order),
Fort Saint George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P. (MD) No.250 of 2019
Dated: 29.03.2019

CS: (31/05/2019) 6P 6C