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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.04.2019
CORAM:

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

H.C.P. (MD) No.58 of 2019

Malaiyandi

... Petitioner

-vs-

1. The Additional Chief Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat, Chennai-600009
2. The District Collector and District Magistrate
Sivagangai District, Sivagangai
3. The Superintendent of Prison
Madurai Central Prison
Madurai District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order of the respondent No.2 in Cr.M.P.No.41/Goonda/2018, dated 14.12.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Varathan @ Varatharajan, son of Munichamy, aged about 43 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

O R D E R

[Order of the Court was made by B.PUGALENDHI, J.]

The second respondent clamped an order of detention on 14.12.2018, as against Varathan @ Varatharajan, son of Munichamy, as the said Authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3 (1) of Tamil Nadu Act 14 of 1982 with a view to prevent him from acting prejudicial to the interest of public health and public order.

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

2. Challenging the order of detention, the brother of the detenu has come forward with the present habeas corpus petition.



3. Heard Mr.R.Alagumani, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents and carefully perused the records.

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4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there was non-application of mind on the part of the detaining authority. According to the learned counsel, in Paragraph No.4 of the impugned detention order, the detaining authority has stated that the bail application for the ground case in Poovanthi Police Station Crime No.155 of 2018 under Sections 341, 294(b), 353, 332, 307 and 506(II) I.P.C., was dismissed by the learned Judicial Magistrate No.II, Sivagangai on 22.11.2018 and the bail applications for the adverse cases in Chettipalayam Police Station Crime No.145 of 2014 as well as Kinathukadavu Police Station Crime No.306 of 2015 were allowed by the learned Judicial Magistrate No.VII, Coimbatore and the learned Sub Judge, Pollachi, respectively. However, the detaining authority has stated that there is a real possibility of the detenu coming out on bail by filing bail application for the above case before the appropriate court, since bail was granted to the similarly placed persons. Thus, according to the learned counsel, there is non-application of mind on the part of the detaining authority.

5. As rightly contended by the learned counsel for the petitioner, the detenu has not filed any fresh bail application for the abovesaid case, however, the detaining authority, in the impugned detention order, has held that there is a real possibility of the detenu coming out on bail by filing bail application for the above said case before the appropriate court, inasmuch as the similarly placed person was granted bail. Even in the vernacular order, the same averment has been made. That apart, the detaining authority has not given any material to show that there is every likelihood of the detenu being released on bail in the case cited supra.

6. At this juncture, it would be relevant to refer to the decision of the Supreme Court in **Rekha vs. State of Tamil Nadu**, [2011 (5) SCC 244], wherein, in Paragraph No.27, it has been held as follows:

"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. However, details of such alleged similar cases must be given, otherwise the bail statement of the authority cannot be believed."

Thus, on the above sole ground alone, the impugned detention order is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.41/Goonda/2018, dated 14.12.2018, passed by the second respondent, is set aside. The detenu, namely, Varathan @ Varatharajan, son of Munichamy, aged about 43 years, is directed to be released forthwith unless his detention is required in connection with any other case.

sd/
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600009.
2. The District Collector and District Magistrate,
Sivagangai District, Sivagangai.
3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Government,
Public(law&order0,
Fort st. George, Channai 9

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