

**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.65 of 2019

Manikandan @ Periyamanikandan

... Petitioner

-vs-

1. State of Tamil Nadu,
rep.by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate
Thoothukudi District, Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.

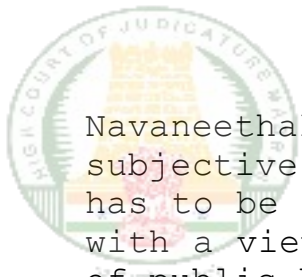
... Respondents

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 passed in H.S.(M) Confdl No.33/2018, dated 21.12.2018, on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Manikandan @ Periyamanikandan, aged about 27 years, son of Navaneethakrishnan, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

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 21.12.2018, as against Manikandan @ Periyamanikandan, son of



Navaneethakrishnan, 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.

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

3. Heard Mr.N.Pragalathan, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents.

4. The learned counsel for the petitioner would submit that there is total non-application of mind on the part of the detaining authority in passing the detention order, as, according to him, no fresh bail application was pending in the ground case at the time of passing the detention order. However, the detention order has been passed by placing reliance upon the bail order granted to the similarly placed person in some other case and stated that there is likelihood of the detenu coming out on bail in the ground case also. 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, no fresh bail application was pending in the ground case at the time of passing the impugned detention order. However, the detaining authority proceeded further to express subjective satisfaction that there was real possibility of the detenu coming out on bail, which shows total non-application of mind. Such a comparison of bail order passed in some other case, when no bail application was pending in the ground case, to express subjective satisfaction of the real possibility of the detenu coming out on bail is against the dictum laid down by a Larger Bench of the Supreme Court in **Rekha vs. State of Tamil Nadu [(2011) 5 SCC 244]**, followed by a Division Bench of the Supreme Court in **Huidrom Konungjao Singh vs. State of Manipur and others [(2012) 7 SCC 181]** and by this Court in an unreported decision in **H.C.P.(MD) No.1567 of 2015 [Sri Devi vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others]**, vide order dated 14.12.2015. Therefore, on this sole ground alone, the impugned detention order is liable to be set aside.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S.(M) Confdl No.33/2018, dated 21.12.2018, passed by the second respondent, is set aside. The detenu, namely, Manikandan @ Periyamanikandan, son of Navaneethakrishnan, aged about 27 years, is directed to be



released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar

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// True Copy //

Sub Assistant Registrar(CS)

To:

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
2. The District Collector and District Magistrate,
Thoothukudi District, Thoothukudi.
3. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
4. The Joint Secretary to Government of Tamil Nadu,
Public (Law & order),
Fort St.George, Chennai-9.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.65 of 2019
26.04.2019

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