



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **03.09.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND**

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

H.C.P. (MD)No.170 of 2019

Jeevan

: Petitioner

Vs.

1.The Principal 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,
Theni District, Theni.

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 Detention Order No.02/2019 dated 30.01.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Jeevan, son of Muthuveerappan, aged about 28 years, now confining at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner
For Respondents

: Mr.R.Alagumani
: Mr.K.Dinesh Babu
Additional Public Prosecutor

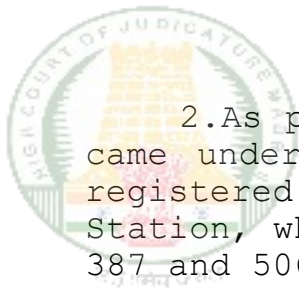
ORDER

S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

Challenge is made to the order of detention passed by the second respondent vide proceedings in Detention Order No.02/2019 dated 30.01.2019, whereby the detenu was ordered to be detained under the provisions of the Tamil Nadu Act 14 of 1982, branding him as a "Goonda".



2.As per the grounds of detention, dated 30.01.2019, the detenu came under adverse notice in three cases and the ground case was registered in Crime No.303/2018 on the file of the Varusanadu Police Station, who is the sponsoring authority, for offence under Sections 387 and 506(ii) IPC.

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3.Though many grounds have been raised in the petition, the learned counsel for the petitioner focussed his argument on the ground that the detaining authority was swayed by the fact that a bail petition may be filed before the competent Court by the detenu or his relatives in future.

4. The learned counsel for the petitioner submitted that the detenu is already in judicial custody for two of the adverse cases and this was not even considered by the detaining authority and the same reflects non application of mind on the part of the detaining authority.

5. The learned counsel for the petitioner further submitted that the subjective satisfaction that has been arrived at by the detaining authority at Paragraph No.5 of the order is not supported by any materials. Therefore, the same also suffers from non application of mind.

6. The learned counsel for the petitioner, in order to substantiate the submissions, relied upon the judgment of the Full Bench reported in **2005 (2) LW 946 [K.Thirupathi v. District Magistrate and District Collector, Tiruchirappalli District & another]**.

7. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents.

8. Even though several grounds have been raised in the petition filed before this Court, this Court is inclined to consider the main ground that has been focussed by the learned counsel for the petitioner.

9. The detaining authority has considered the fact that a secret information was received by the authority to the effect that the detenu or his relatives may, in future, file the bail petition before the competent Court and that generally bails are granted by the same Court or the higher Court, after a lapse of time. Therefore, the detaining authority came to the conclusion that there is an imminent possibility of the detenu coming out on bail.

10. The satisfaction that has been arrived at by the detaining authority is merely on surmises and it is not based on any materials that has been placed before the detaining authority. At this point of time, it will be relevant to take note of the Full Bench



judgment, which has been referred supra.

11. The relevant portions are extracted hereunder:

"24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.

25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with Article 22 of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.

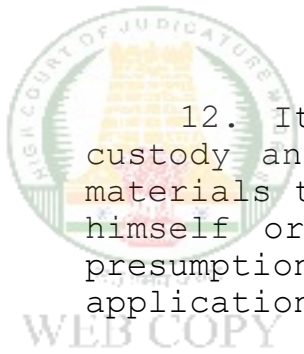
26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.

27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of reliable material placed before him--

(a) that there is a real possibility of his being released on bail, and

(b) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court.

28. It is neither possible nor advisable catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. That is why there is no provision in the Act in that regard and the matter is left to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed."



12. It is clear from the above that where the detenu is in custody and he has not filed any bail petition and there are no materials to show that he is taking steps to file a bail petition by himself or through his relatives or it was based merely on the presumption made by the detaining authority, the same reflects non application of mind on the part of the detaining authority.

13. In view of the above, the detention order suffers from non application of mind and the same is liable to be interfered with by this Court.

14. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order in Cr.M.P.No.02/2019 dated 30.01.2019 is quashed. The detenu, namely Jeevan, son of Muthuveerappan, aged about 28 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 (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Principal 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,
Theni District, Theni.
- 3.The Superintendent of Prison
Madurai Central Prison,
Madurai District.
4. The Joint Secretary to Government,
Public(Law&Order),
Fort st. George, Chennai 9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P. (MD)No.170 of 2019
Dated: 03.09.2019

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