



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2019

CORAM:

**THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

H.C.P. (MD) No. 222 of 2019

Sakthivel : Petitioner
Vs.

1. State of Tamil Nadu, rep by,
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort. St. George,
Chennai-9.
 2. The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District.
 3. The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- : 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 passed by the second respondent in Detention Order No.13/2019 dated 23.02.2019 and quash the same and direct the respondents to produce the body or person of the detenu, namely, Sakthivel, son of Ravichandran, aged 23 years, who is detained in Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr. R. Alagumani
For Respondents : Mr. K. Dinesh Babu
Additional Public Prosecutor

ORDER

Challenge is made to the order of detention passed by the second respondent vide proceedings in Detention Order in No.13/2019, dated 23.02.2019, whereby the detenu was ordered to be detained under the provisions of the Tamil Nadu Act 14 of 1982, branding the detenu as a "GOONDA".



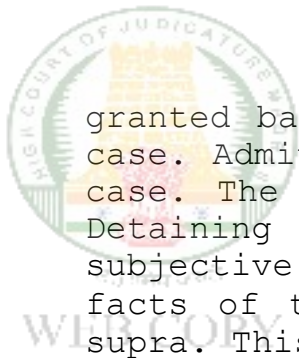
2. The Sponsoring Authority had taken note of the fact that there were two adverse cases pending against the detenu and he was arrested in the ground case in Crime No.4 of 2019 and therefore, taking into consideration the fact that the detenu is a habitual offender, recommendation was made to the second respondent to detain the petitioner under the Tamil Nadu Act 14 of 1982. The second respondent, on being satisfied with the grounds for detention, passed the Detention Order, dated 23.02.2019, against the detenu and branded him as a "GOONDA".

3. The learned counsel for the petitioner submitted that the Detaining Authority had taken into consideration the fact that the bail petition filed by the detenu was dismissed by the Judicial Magistrate Court in the ground case and had come to the conclusion that the detenu will file a bail petition before the higher court and he will be granted bail and therefore, there is an imminent possibility of the detenu coming out on bail. The learned counsel submitted that the reasoning given by the Detaining Authority is not supported by any materials and the similar case that has been taken note of by the Detaining Authority pertains to the case of the year 2010, wherein, bail was granted by this Court by taking into consideration the peculiar facts and circumstances of that case. Therefore, the learned counsel submitted that the similar case that has been referred by the Detaining Authority is not a material to come to a conclusion that the petitioner will come out on bail, more particularly, due to the fact that as on the date of passing the Detention Order, there was no bail petition pending before any Court.

4. In order to substantiate his submissions, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court in ***Rekha vs. State of Tamil nadu***, reported in **2011(5) SCC 244**.

5. We have carefully considered the submissions made on either side and the materials available on record.

6. It is seen from the records that at Paragraph No.5 of the detention order, the Detaining Authority has taken note of the fact that the petitioner has been released on bail in one adverse case. However, while dealing with the ground case, the Detaining Authority had taken into consideration the bail petition that was dismissed by the learned Judicial Magistrate No.I, Dindigul. This petition was dismissed on the ground that the learned Judicial Magistrate did not have the jurisdiction to deal with the bail petition, since the offence involved is exclusively triable by a Court of Sessions. The Detaining Authority has also taken into consideration the fact that the accused, who was involved in a similar case, has been granted bail by higher court. The similar case that has been referred by the Detaining Authority is a case of the year 2010, where this Court had



granted bail after considering the facts and circumstances of that case. Admittedly, the co-accused have not been granted bail in this case. The subjective satisfaction that has been arrived at by the Detaining Authority is not supported by any material and the subjective satisfaction has been arrived on a mere assumption. The facts of this case is squarely covered by **Rekha's** case referred supra. This clearly reflects the non-application of mind on the part of the Detaining Authority and therefore, the order of detention is liable to be interfered with.

7. 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 No.13/2019, dated 23.02.2019, is quashed. The detenu, namely, Sakthivel, son of Ravichandran, aged 23 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other cases.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

PJL

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,
Dindigul District.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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KK/SAR/30.09.2019/3P-5C/