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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P(MD)No.236 of 2019

Selvam

...Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai- 600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kanniyakumari at Nagercoil.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

...Respondents

PRAYER: This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus calling for the entire records connected with the detention order of the second respondent in P.D.No.05/2019, dated 15.2.2019 and to quash the same and direct the respondents to produce the body or person of the detenu by name Thiru. Selvam, son of Murugan @ Kattabas, aged about 25 years, now detained at Palayamkottai Central Prison before this Court and set him at liberty.

For Petitioner

: Mr.R.Alagumani

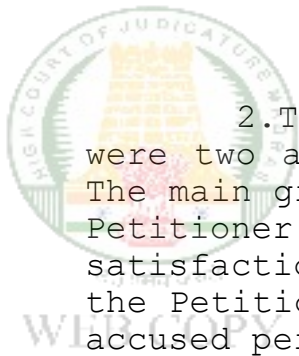
For Respondents

: Mr.K.Dinesh Babu

Addl. Public Prosecutor

O R D E R

This Habeas Corpus Petition is filed challenging the order of detention passed by the second respondent in proceedings in P.D.No.05/2019, dated 15.2.2019, wherein, the Petitioner was termed as a ''Drug Offender''.



2.The learned counsel for the Petitioner submitted that there were two adverse cases and one ground case against the Petitioner. The main ground that has been raised by the learned counsel for the Petitioner is that the Detaining Authority had come to a subjective satisfaction to the effect that there is a imminent possibility of the Petitioner being released on bail, since in similar cases, other accused persons have been granted bail by the Special Court.

3.The learned counsel for the Petitioner submitted that admittedly, in this case, no bail was granted in favour of the Petitioner and the ground stated in the Detention Order that similarly placed persons were granted bail, cannot by itself be a ground to come to a subjective satisfaction regarding the imminent possibility to the Petitioner being released on bail.

4.The learned counsel for the Petitioner in order to substantiate his submissions relied on a decision of the Honourable Supreme Court of India in the case of ***Huidrom Konungjao Singh .vs. State of Manipur and others reported in (2012) 7 Supreme Court Cases 181.***

5.Heard the learned Additional Public Prosecutor appearing on behalf of the respondents. This Court has considered the submissions made on either side and perused the materials available on record.

6.It is seen from the Detention Order that the Petitioner was arrested on 22.1.2019 and he was remanded to judicial custody on the same day. His remand period was also extended till 22.02.2019. The bail petition filed by the Petitioner was also pending. In the meantime, the Detention Order came to be passed on 15.2.2019.

7.In the order of detention at paragraph 6, the detaining authority has come to a subjective satisfaction regarding the imminent possibility of the Petitioner being released on bail only on the ground that the Petitioner has filed a bail application and the same is pending and in similar cases, the accused persons were released on conditional bail by the Special Court.

8.The issue that has been raised by the learned counsel for the Petitioner is that the bail petition of similarly placed persons being considered and granted ipso-facto cannot be a subjective ground of satisfaction and that by itself shows the non-application of mind on the part of the Detaining Authority.

9.At this juncture, it will be relevant to take note of the judgment of the Honourable Supreme Court cited supra. The relevant portions are extracted hereunder:

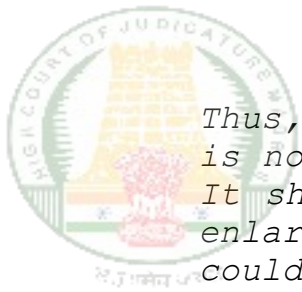
12. In *Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr.*, (2011) 5 SCC 244, this Court while dealing with the issue held :



"7.A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused.....

10.In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

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." (Emphasis added)



Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

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13. So far as the appellant's son is concerned, he had been arrested for the offence related to FIR No.53 (6) 2011 under Section 302 IPC read with Section 25(1-A) Arms Act dated 14.6.2011. The FIR had been lodged against unknown persons, however, appellant's son was arrested on 19.6.2011 in respect of the said offence. Subsequently, the detention order dated 30.6.2011 was passed by the District Magistrate under N.S. Act on various grounds, inter-alia, that the appellant's son was involved in extorting of money and giving shelter to underground members of unlawful association, namely, Kangleipak Communist Party vide notification published in the Gazette of India on 13.11.2009 as his activities were pre-judicial to the security of the State and maintenance of public order.

14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011 under Section 20 of the UA (P) Act and released orders in those cases dated 13.12.2010 and 1.6.2011 respectively had been passed.

15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law.

10. It is clear from the above judgment that merely because somebody-else in similar cases have been granted bail, there cannot be a presumption that the detenu in the instant case will also be enlarged on bail. This was exactly the ground on which the detention order has been passed in the present case.



11. In view of the above, the detention order suffers from non-application of mind and the same is liable to be quashed by this Court.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.05/2019, dated 15.02.2019, passed by the second respondent is set aside. The detenu, namely, Selvam, son of Murugan @ Kattabas, aged about 25 years, is directed to be released forthwith unless his detention is not required in connection with any other case.

Sd/-
Assistant Registrar (P&A)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai- 600 009.
2. The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Kanniyakumari at Nagercoil.
3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P(MD)No.236 of 2019
03.09.2019

vsn

JM/25.09.2019/5P/5C