



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.238 of 2019

Radhakrishnan @ Rooban

: 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 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 in H.S.(M) Confdl No.13/2019 dated 01.03.2019 on the file of the 2nd respondent herein and quash the same and direct the respondent to produce the detenu or body of the detenu namely Radhakrishnan @ Rooban, aged about 36 years, S/o. Vadivel Nadar, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.N.Pragalathan

For Respondents

: 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 in H.S.(M) Confdl No.13/2019 dated 01.03.2019, 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 01.03.2019 , the detenu came under adverse notice in the ground case that was registered in Crime No.23/2019 on the file of the Thalamuthu Nagar Police Station, who is the sponsoring authority for offence under Sections 294 (b), 302 and 506 (ii) IPC.

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 the detenu is trying to file a bail petition before the competent Court.

4. The learned counsel for the petitioner submitted that the detaining authority took into consideration the fact that in similar cases, the accused persons have been granted bail by the High Court.

5. The learned counsel for the petitioner submitted that the detaining authority, without the availability of materials, cannot *ipso facto* satisfy himself regarding the imminent possibility of the detenu coming out on bail, merely on the ground that the accused, who are similarly placed have been granted bail.

6. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in **Rekha v. State of Tamil Nadu ((2011) 5 SCC 244)** to substantiate his submission.

7. The learned counsel for the petitioner submitted that a single incident howsoever heinous is insufficient to pass a detention order, more particularly, on the ground that the accused persons, against whom, similar cases have been filed, were granted bail by the High Court.

8. To substantiate his submission, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in **Yumman Ongbi Lembi Leima v. State of Manipur [2012 (1) SCC 701]**.

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

10. Though several grounds were raised by the learned counsel for the petitioner, it will be enough, if this Court focuses on



the main ground that has been raised by the learned counsel for the petitioner, which is squarely covered by the judgment of the Hon'ble Supreme Court in ***Yumman Ongbi Lembi Leima*** referred supra.

11. The relevant portions of the judgment is extracted hereunder:

"13. Having carefully considered the submissions made on behalf of respective parties, we are inclined to hold that the extra-ordinary powers of detaining an individual in contravention of the provisions of Article 22(2) of the Constitution was not warranted in the instant case, where the grounds of detention do not disclose any material which was before the detaining authority, other than the fact that there was every likelihood of Yumman Somendro being released on bail in connection with the cases in respect of which he had been arrested, to support the order of detention. Article 21 of the Constitution enjoins that no person shall be deprived of his life or personal liberty except, according to procedure established by law. In the instant case, although the power is vested with the concerned authorities, unless the same are invoked and implemented in a justifiable manner, such action of the detaining authority cannot be sustained, inasmuch as, such a detention order is an exception to the provisions of Articles 21 and 22(2) of the Constitution.

14. When the Courts thought it fit to release the Appellant's husband on bail in connection with the cases in respect of which he had been arrested, the mere apprehension that he was likely to be released on bail as a ground of his detention, is not justified. In addition to the above, the FIRs in respect of which the Appellant's husband had been arrested relate to the years 1994, 1995 and 1998 respectively, whereas the order of detention was passed against him on 31st January, 2011, almost 12 years after the last FIR No.190(5)98 IPS under Section 13 of the Unlawful Activities (Prevention) Act. There is no live link between the earlier incidents and the incident in respect of which the detention order had been passed.

15. As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right



guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. An individual incident of an offence under the Indian Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention.

16. In our view, the detaining authority acted rather casually in the matter in issuing the order of detention and the High Court also appears to have missed the right to liberty as contained in Article 21 of the Constitution and Article 22(2) thereof, as well as the provisions of Section 167 of the Code of Criminal Procedure.

17. The Appeal must, therefore, succeed. The impugned order of detention dated 31st January, 2011, passed by the District Magistrate, Imphal West District, Manipur, in regard to the detention of Yumman Somendro @ Somo @ Tiken son of Y. Roton Singh, is hereby quashed. The Appeal accordingly succeeds. Let the Appellant's husband, Yumman Somendro, be released from custody, if he is not required in connection with any other case."

12. In view of the above, it is clear that in a case involving single incident, the mere fact that there is imminent possibility of the detenu coming out on bail, since the accused persons against whom similar cases were filed were granted bail, is not a sufficient ground to pass a detention order, more particularly, when the detenu has not even filed a bail petition. The subjective satisfaction that has been arrived at by the detaining authority suffers from non application of mind and therefore, the same is liable to be interfered with by this Court.

13. 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 H.S.(M) Confdl No.13/2019 dated 01.03.2019 is quashed. The detenu, namely Radhakrishnan @ Rooban, S/o. Vadivel Nadar, aged 36 years, is ordered to be set at



liberty forthwith, if he is not required for detention in connection with any other case.

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Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

RR

To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St. George, Chennai-9.
- 2.The Commissioner of Police,
O/o. The Commissioner of Police,
Tiruchirappalli City, Tiruchirappalli.
- 3.The Superintendent of Prison
Central Prison, Tiruchirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P. (MD) No.238 of 2019

Dated: 03.09.2019

KM/ (20.09.2019) 5P 5C