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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.09.2019**

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P (MD)No.282 of 2019

Snowvin

...Petitioner

Vs.

1.The State of Tamil Nadu,
represented by the Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-9.

2.The District Collector and District Magistrate
Thoothukudi District
Thoothukudi

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

...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 passed in H.S.(MD).Confdl.No.15/2019, dated 09.03.2019 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detainee or body of the detainee namely Snowvin, aged about 19 years, S/o.Late.Stone, 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

Addl. Public Prosecutor

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O R D E R

The present Habeas Corpus Petition is directed against the Detention Order passed by second respondent in H.S(MD). Confdl.No.15/19, dated 09.03.2019.

2.The Sponsoring Authority had recommended for the detention of the Petitioner under Act 14 of 1982 on a solitary case registered against the Petitioner and the Petitioner was thereafter arrested in the said case. The Detaining Authority has branded the detenu as a 'Goonda' and has passed the Detention order, dated 09.03.2019.

3.The learned counsel for the Petitioner submitted that the Detention Order was passed based on a ground case that has been registered against the detenu in Crime No.57 of 2019, for the offence under Sections, 294(b), 302 and 506(ii) I.P.C. The learned counsel submitted that the Detaining Authority having stated that no bail Petition has been filed by the detenu, proceeded to arrive at the subjective satisfaction only on the ground that similarly placed accused person has been granted bail by this Court. The learned counsel further submitted that the subjective satisfaction has been arrived at without any materials and therefore, the Detention Order is vitiated.

4.In support of his contention, the learned counsel for the Petitioner relied upon the case of ***Rekha .vs. State of Tamil Nadu, through Secretary to Government and another reported in (2011) 5 SCC 244***, wherein, it has been held as follows:

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....."



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.

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

6. We have carefully gone through the Detention Order. It is seen that the Detaining Authority has discussed about the case that has been registered against the detenu. The Detaining Authority has specifically stated that no bail petition has been filed by the detenu. However, he has arrived at the subjective satisfaction only on the ground that similarly placed accused person was granted the relief of bail by the High Court. The bail order that has been relied upon by the Detaining Authority pertains to the year 2016. Therefore, the subjective satisfaction arrived at by the Detaining Authority is not supported by any materials and it clearly reflects the non application of mind. Consequently, the Detention Order stands vitiated.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S(MD).Confdl.No.15/19, dated 09.03.2019



passed by the second respondent is set aside. The detenu, namely, Snowvin, son of late.Stone, aged about 19 years, is directed to be released forthwith unless his detention is not required in connection with any other case.

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Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
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Chennai-9.
- 2.The District Collector and District Magistrate
Thoothukudi District
Thoothukudi
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P(MD)No.282 of 2019
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KK/SAR/30.09.2019/5P-5C/