



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P(MD)No. 291 of 2019

R. Malathi

...Petitioner

Vs.

1.The Government of Tamil Nadu, Home,
Prohibition and Excise IX,
Secretariat,
Fort St.George,
Chennai-9.

2.The District Collector and District Magistrate,
Dindigul District,
Dindigul.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

....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 on the file of the second respondent in Detention Order No.12/2019 and set aside the order of detention passed therein, dated 23.02.2019; direct the respondents to produce the petitioner's husband by name Rengamoorthy @ Moorthy, aged 30 years before this Court and set him at liberty, now detained at Central Prison, Madurai.

For Petitioner

:Mr.J. William Christopher

For Respondents

: Mr.K.Dinesh Babu

Additional Public Prosecutor

O R D E R

This Habeas Corpus Petition is directed against the detention order of the second respondent in P.D.No.12 of 2019,

<https://hccourtscourtsup2in12services/>



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 in which the petitioner was arrested. The Detaining Authority has branded the detenu as a 'Goonda' and has passed the Detention order, dated 23.2.2019.

3. The learned counsel for the Petitioner submitted that the detention order has been passed based on a solitary case that was registered in Crime No.4 of 2019, for the offence under Sections 147, 148, 341, 302 and 109 of I.P.C. He further submitted that the bail petition that was filed by the detenu was dismissed on 10.01.2019 and as on the date of passing of the detention order, no bail petition was filed and pending. He further submitted that the detaining authority has come to a subjective satisfaction only on the ground that the accused persons who are similarly placed have been granted bail by the High Court. He further submitted that this cannot be the sole ground on which the detaining authority can arrive at such a subjective satisfaction.

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.....

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.

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.

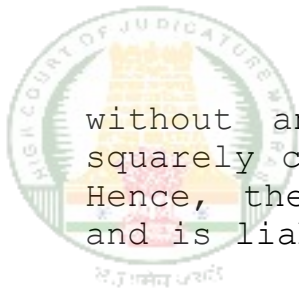
14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011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

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

6. We have carefully gone through the detention order passed by the second respondent. The detaining authority has considered the above solitary case that has been registered against the detenu. While, considering the possibility of the detenu coming on bail, the only fact that has been considered by the detaining authority is that similarly placed accused persons have been granted bail by the High Court. The order that has been referred by the detaining authority is the order passed in the year 2010 by the High Court and the order was passed, based on the peculiar facts and circumstances of that case. Apart from this order, there was no other material that was placed before the detaining authority.

7. The Detaining Authority was also aware of the fact that there was no bail petition pending on the day, when the detention order was passed. Therefore, this Court is of the considered view that the Detaining Authority has come to a subjective satisfaction



without any supporting materials. The facts of the case is squarely covered by the Judgment in Rekha's case, referred supra. Hence, the detention order suffers from non application of mind and is liable to be interfered by this Court.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order P.D.No.12 of 2019, dated 23.2.2019, passed by the second respondent is set aside. The detenu, namely, Rengamoorthy @ Moorthy, son of Lakshmanan, aged about 30 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

ksa

To

1.The Government of Tamil Nadu, Home,
Prohibition and Excise IX,
Secretariat,
Fort St.George,
Chennai-9.

2.The District Collector and District Magistrate,
Dindigul Thanjavur District,
Dindigul.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

4.The joint Sectretary to Government
Public (Law and Order)
Fort St.George, chennai-9

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.WILLIAM CHRISTOPER, Advocate (SR-85459[F] dated 05/09/2019)

ORDER MADE IN

H.C.P (MD) No.291 of 2019

05.09.2019