



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2019

CORAM:

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

H.C.P. (MD) No. 299 of 2019

Sahaya Shaji Jenish @ Jenish

: 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 Collector and District Magistrate,
Kanyakumari District,
Nagercoil.

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 P.D.No.11/2019 dated 27.03.2019 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Sahaya Shaji Jenish @ Jenish, aged about 24 years, S/o.Mohan, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner
For Respondents

: Mr.N.Pragalathan
: Mr.K.Dinesh Babu
Additional Public Prosecutor

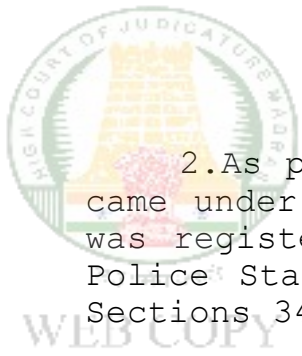
ORDER

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 P.D.No.11/2019 dated 27.03.2019, 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 27.03.2019, the detenu came under adverse notice in two adverse cases and the ground case was registered in Crime No.24/2019 on the file of the Aralvaimozhi Police Station, who is the sponsoring authority for offence under Sections 341, 294(b), 324, 307 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 aware of the fact that the petitioner was already in judicial custody in one adverse case, which was registered by the very same respondent police in Crime No.37/2019. However, the detaining authority did not take into consideration the fact that the petitioner was in judicial custody in the adverse case and at Paragraph No.5 of the detention order, the detaining authority has only taken into consideration the imminent possibility of the detenu released on bail in the ground case, when there is no bail application filed by the detenu. Therefore, the learned counsel for the petitioner submitted that this by itself reflects non application of mind.

4. The further submission made by the learned counsel for the petitioner is that the detaining authority has stated in the detention order that in similar cases, like the one, which has been registered against the detenu, the sessions Court has granted bail to some other accused persons and therefore, there is likelihood of the detenu also being released on bail at a later stage.

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

8. The submissions made by the learned counsel for the petitioner has force. The detaining authority in spite of being aware of the fact that the petitioner is in judicial custody in the adverse case, did not refer anywhere in his order regarding the same and he has merely focussed only on the likelihood of the detenu being released on bail in the ground case. This by itself reflects non application of mind.

9. 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 P.D.No.11/2019 dated



27.03.2019 is quashed. The detenu, namely Sahaya Shaji Jenish @ Jenish, S/o.Mohan, aged 24 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St. George, Chennai-9.
2. The District Collector and District Magistrate,
Kanyakumari District,
Nagercoil.
3. The Superintendent of Prison
Central Prison, Palayamkottai.
Tirunelveli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort.St. George, Chennai-9

Order made in
H.C.P. (MD) No.299 of 2019
Dated: 24.09.2019

RR

VB(16.10.2019) 3P 6C