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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.304 of 2019

Marimuthu

: Petitioner

Vs.

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

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

3.The Superintendent of Prison
Palayamkottai Central Prison,
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 of the respondent No.2 in M.H.S.Confdl. No.30/2019 dated 26.03.2019 and quash the same and direct the respondents to produce the detenu by name Sankaralingam @ Sankar, son of Marimuthu @ Rettaikundi, aged about 20 years, now detained in Palayamkottai Central Prison, before this Court and set him at liberty.

For Petitioner

: Mr.R.Vinoth Bharathi

For Respondents

: Mr.K.Dinesh Babu

Additional Public Prosecutor

ORDER

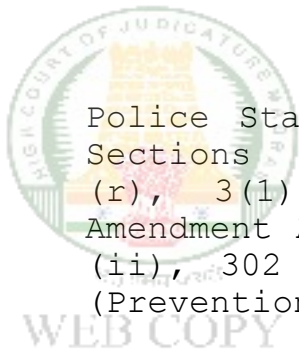
S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

Challenge is made to the order of detention passed by the second respondent vide proceedings in Detention Order in M.H.S.Confdl. No.30/2019 dated 26.03.2019, 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 26.03.2019, the detenu came under adverse notice in two cases and the ground case was registered in P.S.Crime No.73/2019 on the file of the Munneerpallam



Police Station, who is the sponsoring authority for offence under Sections 147, 148, 341, 294(b), 506(ii), 302 Ipc and Sections 3(1)(r), 3(1)(s), 3(2)(v), (Va) SC/ST (Prevention of Atrocities) Amendment Act, 2015 altered into 147, 148, 120(B), 341, 294(b), 506(ii), 302 Ipc and Sections 3(1)(r), 3(1)(s), 3(2)(v), (Va) SC/ST (Prevention of Atrocities) Amendment Act, 2015.

3.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.

4.The learned counsel for the Petitioner submitted that admittedly, in this case, no bail application was filed by 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.

5.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.***

6.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.

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 in similar cases, the accused persons were released on bail by the Court below.

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:

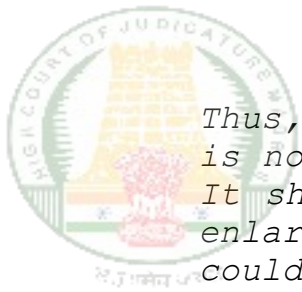
12. In *Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr.*, (2011) 5 SCC 244, this Court while dealing with the issue held :



"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, this Habeas Corpus Petition is allowed and the impugned Detention Order, passed by the second respondent, in his proceedings in Detention Order in M.H.S.Confdl. No.30/2019 dated 26.03.2019 is quashed. The detenu, namely Sankaralingam @ Sankar, S/o.Marimuthu @ Rettaikundi, aged 20 years, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

RR

To

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

**Order made in
H.C.P. (MD)No.304 of 2019
Dated: 24.09.2019**

CS(23.10.2019) 5P 6C