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H.C.P(MD)No.352 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.10.2019**

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P(MD)No.352 of 2019

Kasturi

...Petitioner/Wife of Detenu

Vs.

- 1.Government of Tamil Nadu
represented by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-9.
- 2.The District Collector and District Magistrate
Nagapattinam District,
Nagapattinam.
- 3.The Superintendent,
Central Prison,
Trichy.

...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 of the 2nd respondent in C.O.C.No.17/2019 dated 01.04.2019 and quash the same and direct the respondents to produce the body and person of the petitioner husband namely, Thoondi @ Balakrishnan, son of Veerappan, aged about 50 years now confined at Central Prison, Tiruchirappalli and set him at liberty forthwith.

For Petitioner : Mr.B.Jameelarasu

For Respondents : Mr.K.Dinesh Babu
Addl. Public Prosecutor

O R D E R

The present Habeas Corpus Petition is directed against the Detention Order passed by second respondent in C.O.C.No.17 of 2019, dated 01.04.2019.

2. As per the grounds of detention, dated 11.02.2019, the detenu came under adverse notice in two adverse cases and in the ground case, which was registered in Crime No.78/2019 on the file of



the Sembanarkoil Police Station, who is the sponsoring authority, for offence under Sections 4(1)(i), 4(1)(aaa) r/w 4 (1-A) TNP Act 1937.

3.The learned counsel for the Petitioner submitted that the Detention Order was passed based on a case that has been registered against the detenu in Crime No.78 of 2019, for the offence as stated supra. The learned counsel submitted that the Detaining Authority having stated that no bail Petition has been filed by the detenu or pending in the ground case, proceeded to arrive at the subjective satisfaction only on the ground that the earlier bail application filed by the detenu was dismissed and that there is a likelihood of filing another bail application. 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.....

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



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.

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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. 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 there is a likelihood of the detenu filing a bail application. 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 C.O.C.No.17/2019 dated 01.04.2019 passed by the second respondent is set aside. The detenu, namely, Thoondi @ Balakrishnan, son of Veerappan, aged about 50 years, is directed to be released forthwith, unless his detention is not required in connection with any other case.

Sd/-
Assistant Registrar (CS-III)

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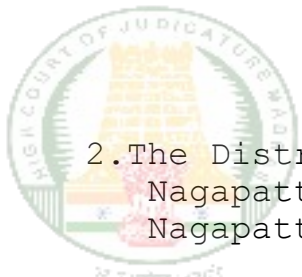
Sub Assistant Registrar

RR

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-9.

<https://hcservices.ecourts.gov.in/hcservices/>



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

3.The Superintendent,
Central Prison,
Trichy.

4.The Joint Secretary to Government,
Public (Law & Order),
Fort St.George,
Chennai-600 009.

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

ORDER MADE IN

H.C.P (MD) No. 352 of 2019

04.10.2019

JM/24.10.2019/5P/6C