



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P(MD)No.416 of 2019

Janaki

...Petitioner

Vs.

1.The District Collector and District Magistrate
Thoothukudi District, Thoothukudi.

2.The State rep. by
the Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.

3.The Inspector of Police,
Srivaikundam Police Station,
Thoothukudi District.

4.The Superintendent,
Central Prison,
Salem.

...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, to call for the records in H.S.(M) Confdl. No.22/19 dated 30.04.2019 and set aside the same and direct the respondents herein to produce the detenu Vijayan, aged 40 years, S/o.Esakkidurai @ Esakkiappan, who has been termed as "Goonda" and now confined in Central Prison, Salem before this Court and set the detenu at liberty.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.K.Dinesh Babu

Addl. Public Prosecutor

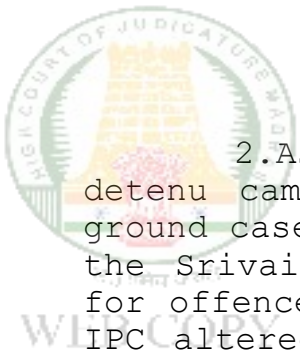
O R D E R

S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

The present Habeas Corpus Petition is directed against the Detention Order passed by second respondent in Detention Order in H.S.(M) Confdl.No.22/2019 dated 30.04.2019.



2.As per the grounds of detention, dated 12.04.2019, the detenu came under adverse notice in one adverse case and in the ground case, which was registered in Crime No.67/2019 on the file of the Srivaikundam Police Station, who is the sponsoring authority, for offence under Sections 147, 148, 341, 307, 302, 294(b), 506(ii) IPC altered into 147, 148, 341, 307, 302, 294(b), 506(ii), 120(b) IPC r/w 149 IPC.

3. Though many grounds have been raised by the learned counsel for the petitioner, one of the ground that has been raised by the learned counsel for the petitioner is that the order of detention has been passed, based on the ground case, for which, the police have registered an FIR in Crime No.67/2019 for offences as stated supra.

4.The learned counsel for the petitioner further submitted that the detenu has not filed any bail petition. When the detenu has not even filed a bail petition, the detaining authority, without any supporting materials, had come to a subjective satisfaction regarding the imminent possibility of the detenu coming out on bail by filing a bail petition, only on the ground that in a similar case, the accused person has been released on bail by the Higher Court.

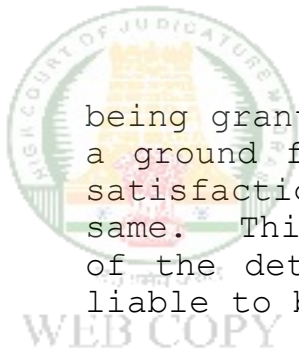
5. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in ***Rekha v. State of Tamil Nadu (2011) 5 SCC 244*** to substantiate his submission.

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

7. Even though several grounds have been raised in the petition filed before this Court, it will be enough, if this Court focuses on the main ground that has been raised by the learned counsel for the petitioner. The detaining authority, at Paragraph No.7 of the detention order, mentioned that the petitioner has not filed the bail application. However, it has been stated that in cases of similar nature, the accused persons have been granted bail by the High Court and therefore, there is imminent possibility of the detenu filing a similar bail petition and coming out on bail, after a lapse of time.

8. The issue that has been raised by the learned counsel for the petitioner is no longer *res integra* and it is covered by the judgment that has been cited by the learned counsel for the petitioner, which has been referred supra.

9. The Hon'ble Supreme Court has categorically held in the above judgment that the accused persons, who are similarly placed



being granted bail by the same Court or by a higher Court, cannot be a ground for the detaining authority to come to such a subjective satisfaction without there being any materials to substantiate the same. This by itself reflects non application of mind on the part of the detaining authority. Therefore, the order of detention is liable to be interfered with.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.22/2019 dated 30.04.2019 passed by the first respondent is set aside. The detenu, namely, Vijayan, son of Esakkidurai @ Esakkiappan, aged about 40 years, is directed to be released forthwith, unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

RR

To

1. The District Collector and District Magistrate
Thoothukudi District, Thoothukudi.
2. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
3. The Inspector of Police,
Srivaikundam Police Station,
Thoothukudi District.
4. The Superintendent,
Central Prison, Salem.
5. The Joint Secretary to Government,
Public (Law & order),
Fort St. George, Chennai - 9.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN

H.C.P (MD) No. 416 of 2019

31.10.2019

TR(19.11.2019) 3P 7C