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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.11.2019**

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P(MD)No.431 of 2019

Karuppasamy ...Petitioner

Vs.

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District. ...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 records connected with the detention order of the Respondent No.2 in M.H.S.Confdl.No.37/2019 dated 17.05.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Karuppasamy, son of Murugan, aged about 29 years, now detained at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner :Mr.K.M.Karunakaran

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

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O R D E R

The present Habeas Corpus Petition is directed against the Detention Order passed by second respondent in Detention Order in M.H.S.Confdl.No.37/2019 dated 17.05.2019.

2.The Sponsoring Authority had recommended for the detention of the Petitioner under Act 14 of 1982 based on two adverse cases and one ground case and the Petitioner was thereafter arrested in the said case. The Detaining Authority has branded the detenu as a ''GOONDA'' and has passed the Detention order, dated 17.05.2019.

3.The learned counsel for the Petitioner submitted that the Detention Order was passed based on two adverse cases and a ground case registered against the detenue in Crime No.106 of 2019, for the offence under Sections 341, 294(b), 302 and 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The learned counsel submitted that the Detaining Authority having stated that no bail Petition has been filed by the detenu, proceeded to arrive at the subjective satisfaction only on the ground that similarly placed accused persons have been granted bail by the Higher Court. 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,*

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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

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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 state that no bail petition has been filed by the detenu. However, he has arrived at the subjective satisfaction only on the ground that similarly placed accused persons were granted the relief of bail by the High Court. The bail order that has been relied upon by the Detaining Authority pertains to the year 2015 and it is seen that the bail order confines itself to the facts of that particular case. 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 M.H.S.Confdl.No.37/2019 dated 17.05.2019 passed by the second respondent is set aside. The detenu, namely, Karuppasamy, son of Murugan, aged about 29 years, is directed to be

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released forthwith unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009.

2.The District Collector and District Magistrate,
Office of the District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

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.431 of 2019
08.11.2019

JMN(04.12.2019) 5P : 6C

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