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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD)No.482 of 2019

Hariharan

: Petitioner

Vs

1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.

2.The Commissioner,
Office of the Commissioner of Police,
Madurai City, Madurai.

3.The Superintendent of Prison,
Madurai Central Prison
Madurai District.

: Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the 2nd respondent in No.29/BCDFGISSSV/2019, dated 03.06.2019, quash the same and direct the respondents to produce the person or body of the detenu by name Hariharan, S/o.Rajendran, aged about 19 years, now confining at Madurai Central Prison, Trichy before this Honourable Court and set him at liberty forthwith.

For Petitioner
For Respondents

: Mr.R.Alagumani
: Mr.K.Dinesh Babu
Addl.Public Prosecutor

O R D E R

[Order of the Court was made by **T.RAJA, J.**]

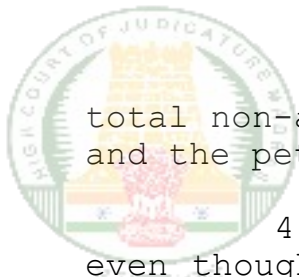
Hariharan, S/o.Rajendran, aged about 19 years has come to this Court, assailing the correctness of the impugned order of detention, dated 03.06.2019 passed by the second respondent/the



Commissioner of Police, Madurai City, detaining him at the Central Prison, Madurai and to produce him before this Court and set him free.

2.Learned counsel appearing for the petitioner argued that the petitioner R.Hariharan was arrayed as A-4 in Cr.No.2104/2016 registered by the V2 Avaniyapuram Police Station under Sections 147, 148, 341, 307 and 302 I.P.C altered into Sections 147, 148, 341 307, 302, 506(ii) r/w 120(b) I.P.C and the same was taken as a ground case for passing the impugned order of detention by the Detaining Authority/Commissioner of Police, Madurai City and in connection with that case, he was arrested on 16.03.2019.

3.The case projected before us by the learned counsel appearing for the petitioner shows that the respondent, while passing the impugned order of detention, dated 03.06.2019, has completely overlooked a vital and crucial fact for passing the impugned detention order that the detenu/petitioner herein has not moved any application before any Court. When the petitioner moved bail application thrice, one on 30.04.2019 before the learned Principal Sessions Court, Madurai in CrI.M.P.No.1450/2019, it was rejected on 30.04.2019; again, on yet another day, the 2nd application was moved before the learned Vacation Sessions Judge, Madurai in CrI.M.P.No.30/2019 and the same was also dismissed on 22.05.2019; when the third application in CrI.M.P.No.437/2019 was moved before the Vacation Sessions Judge, Madurai, it was also dismissed on 29.05.2019. Therefore, in view of the successive dismissal of the bail applications, the petitioner desired not to move any application. Whereas, the Detaining Authority, while passing the impugned detention order on 03.06.2019, has invented a false reason to pass the impugned order that there is every likelihood of enlarging the petitioner on bail. Therefore, it has been mentioned that a necessity has arisen to pass the impugned detention order. Even in the impugned detention order, it has been specifically mentioned that the Detaining Authority has admitted that he is aware through the special report dated 30.05.2019 of the Sponsoring Authority that the relatives of Hariharan, S/o.Rajendran are taking efforts to take him out on bail by filing further bail application before the Court concerned in the said ground case. Moreover, bail was granted by the learned Principal Sessions Judge, Madurai in CrI.M.P.No.4595/2017 on 29.08.2017 to one accused Bajjivayan @ Viji in the case in Cr.No.2104/2016 u/s 147, 148, 341, 307 and 302 I.P.C altered into Sections 147, 148, 341 307, 302, 506(ii) r/w 120(b) I.P.C. on the file of V2 Avaniyapuram Police Station and it is treated as similar to that of ground case by the Detaining Authority. But one legal issue ought to have been considered by the Detaining Authority that on the date of passing the impugned detention order i.e on 03.06.2019, there was no bail application pending at all and the petitioner also, by giving up his hope, has not moved any application. In view of above infirmities, learned counsel submitted that the impugned order reflects



total non-application of mind and hence, the same has to be set side and the petitioner can be released.

4.Learned Additional Public Prosecutor would submit that even though there was no application pending on the date of passing the impugned order, already, the petitioner moved three bail applications and they were all dismissed as mentioned above. In view of the same, the Detaining Authority has come to a right conclusion that there is every possibility for the petitioner to move yet another application. Therefore, the impugned detention order has been rightly passed and no infirmity can be found in the same.

5.Heard both sides and perused the records carefully.

6.On a perusal of the records, we are of the considered view that the impugned detention order has been passed on the ground that the petitioner is likely to be enlarged on bail. When no such application has been moved by the petitioner, the reasoning given by the Detaining Authority is not sustainable. Even in the case of ***Rekha Vs State of Tamil Nadu through Secretary to Government and another, reported in (2011) 5 Supreme Court Cases 244***, it has been held that if there is no bail application pending, then there is no likelihood of the person in custody being released on bail. Therefore, the Detaining Authority in the present case has no reason to conclude that there is a likelihood of the detenu being released on bail as there is no bail petition moved by the detenu. Moreover, the details of any such bail application also has not been furnished. Therefore, such a bald statement of the Detaining Authority cannot be sustained in law. As highlighted above, if there is a real possibility of release of detenu on bail, who is in custody, then, the Detaining Authority should have mentioned as to whether he has moved a bail application, which is pending. Whereas in the present case, there is no such bail application has been moved or pending now. Therefore, the subjective satisfaction reached by the Detaining Authority that there is a real possibility and likelihood of the detenu in custody being released on bail could not arise. Hence, the detention order shall be held illegal. Moreover, there can be an exception to this rule that is, if there is 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 and that is also not the reason cited in the present case.

7.In view of the above reasons mentioned, this petition is allowed and impugned detention order passed by the 2nd respondent in No.29/BCDFGISSSV/2019, dated 03.06.2019, is set aside and the detenu Hariharan, S/o.Rajendran, aged about 19 years, now detained at



Madurai Central Prison, Madurai is set at liberty. The Superintendent of Central Prison, Madurai/third respondent is directed to release him forthwith, unless his presence is required in connection with any other case.

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Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

Vs

To

- 1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.
- 2.The Commissioner,
Office of the Commissioner of Police,
Madurai City, Madurai.
- 3.The Superintendent of Prison,
Madurai Central Prison
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.482 of 2019
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VB(06.01.2020) 4P 5C