



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P. (MD)No.485 of 2019

Paramasivam

: Petitioner

Vs.

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

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

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

: Respondents

PRAYER: Habeas Corpus Petition under Article 226 of the Constitution of India has been filed to call for the entire records connected with the detention order of the respondent No.2 in Detention Order No.30/2019 dated 03.06.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Paramasivam, son of Kasi, aged about 26 years, now detained in Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner
For Respondents

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

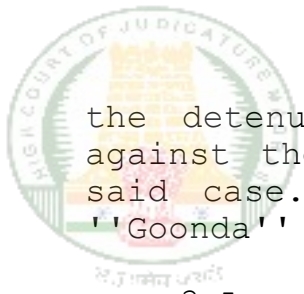
ORDER

(Order of the Court was made by T.RAJA, J.)

The present Habeas Corpus Petition is directed against the Detention Order passed by second respondent in Detention Order No.30/2019 dated 30.06.2019.

2.The Sponsoring Authority had recommended for the detention of

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the detenu under Act 14 of 1982 on a solitary case registered against the detenu and the detenu was thereafter arrested in the said case. The Detaining Authority has branded the detenu as a 'Goonda' and has passed the Detention order, dated 30.06.2019.

3.Learned counsel for the Petitioner submitted that the Detention Order was passed based on a solitary case that has been registered against the detenu in Crime No.227 of 2019, for the offence under Sections 147, 148, 302 and 506(II) IPC.

4.Learned counsel for the petitioner, assailing the correctness of the impugned order, stated that the second respondent herein, without proper application of mind, has erroneously passed the impugned order of detention citing a reason when the accused was arrested on 25.04.2019 and immediately thereafter when he moved bail petition before the Judicial Magistrate, No.II, Dindigul in CrI.M.P.No.4858/2019, the same was dismissed. Subsequently, when he moved another bail petition unsuccessfully before the learned Principal District and Sessions Judge, Dindigul, in CrI.M.P.No.73/2019, the same also came to be dismissed on 28.05.2019. However, the detaining authority has erroneously proceeded that in Crime No.151/2010 registered on the file of the Dindigul Town West Police Station, this Court has granted bail to one of the accused, viz., Murugesan in CrI.O.P.(MD) No.5699/2010 dated 13.05.2010 and inferring that there is a real possibility of the detenu coming out on bail passed the order of detention, which reflects the total non application of mind. Learned counsel further submitted that after the dismissal of the bail applications, the detenu has not moved any bail applications and moreover, the co-accused has not even enlarged on bail by any Court. Taking support from the order passed by this Court in CrI.O.P.(MD) No.5699/2010, the learned counsel submitted that granting bail in favour of the said accused is no way connected to the case of the present detenu and therefore, the reference that has been made by the second respondent in the impugned order cannot be a ground for passing the impugned order of detention. He would further submit that on the date of passing of the detention order, the detenu has not moved any bail application. Therefore, the need and necessity for the second respondent to pass the impugned order is totally far from acceptance and the mere *ipse dixit* statements made in the ground of detention cannot be sustained in the eye of law and on the sole ground, the Detention Order is vitiated.

5.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:

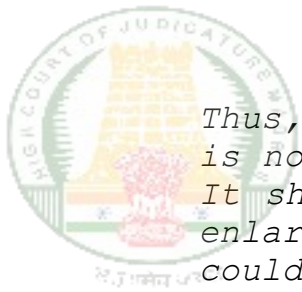
12. In *Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr.*, (2011) 5 SCC 244, this Court while dealing with the issue held :



"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 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.

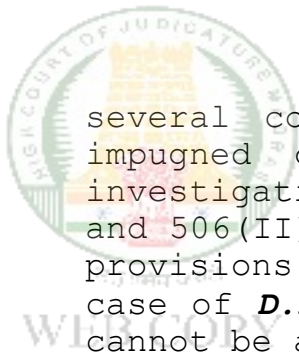
14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011 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.

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

7. The learned Additional Public Prosecutor, replying to the

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several contentions raised before this Court to strike down the impugned order of detention, submitted that after the proper investigation, the case was altered to under Sections 147, 148, 302 and 506(II) IPC. Moreover, when there is no violation of the settled provisions of law formulated by the Hon'ble Supreme Court in the case of **D.K.Basu v. State of West Bengal**, the version of the detenu cannot be accepted to interfere with the impugned order.

8. In the counter affidavit filed, the detaining authority, after perusing all the records furnished by the sponsoring authority, has come to the subjective satisfaction that there was a compelling necessity to detain the detenu in order to prevent him from indulging in such further activities in future and moreover the detaining authority, referring to the order granting bail to one Mr. Murugesan in Crl.O.P. (MD) No.5699/2010 dated 13.05.2010, asserted that since in a similar case, this Court has granted bail, there is every possibility for the detenu to come out on bail. However, the said case is nothing to do with the facts of the present case.

9. 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. However, this Court finds it difficult to accept the reasonings given by the second respondent to pass the impugned order of detention against the detenu, inasmuch as the said bail order does not relate to the co-accused in the same case. The Detaining Authority has specifically stated that no bail petition has been filed by the detenu on the date of passing of the detention order, even though his earlier bail applications were dismissed by the Court below on 07.05.2019 and 28.05.2019 respectively. Since the case, which was referred to by the detaining authority with regard to Mr. Murugesan had no concern with the facts of the present case.

10. As rightly held by the Hon'ble Apex Court in **Huidrom Konungjao Singh v. State of Manipur and others**, reported in (2012) 7 SCC 181, merely because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case, the detenu applied for bail, he could have been released on bail.

11. In view of the above, we find it difficult to accept the reasonings given by the second respondent to pass the impugned order of detention. Therefore, the subjective satisfaction arrived at by the Detaining Authority, having not been supported by any material, clearly reflects non application of mind and the Detention Order stands vitiated.

12. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.30/2019 dated 03.06.2019 passed by the second respondent is set aside. The detenu, namely,



Paramasivam, son of Kasi, aged about 26 years, is directed to be released forthwith, unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

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

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