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H.C.P. (MD) Nos.501 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **19.12.2019**

CORAM:

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

and

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

H.C.P. (MD) Nos.501 of 2019

Balamurugan

... Petitioner

versus

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretary,
Chennai - 600 009.

2. The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai - 20.

3. The Superintendent of Prison,
Madurai Central Prison,
Madurai District - 16.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Habeas Corpus, to call for the entire records, connected with the detention order of the respondent No.2 in No.30/BCDFGISSSV/2019, dated 10.06.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Balamurugan, Son of Chellasamy, aged about 24 years, now confining at Madurai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : M/s.R.Alagumani
For Respondents : Mr.K.Dinesh Babu,
Additional Public Prosecutor

ORDER

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

The petitioner has suffered the impugned detention order dated 10.06.2019 passed by the Commissioner of Police, Madurai, the second respondent herein, under Section 2(f) of the Tamil Nadu Act No.14 of 1982, branding him as "Goonda". Challenging the same, this petition has been filed.

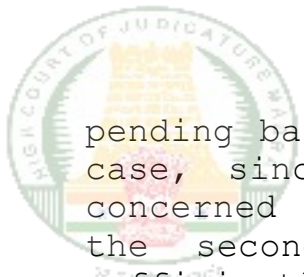
<https://hcservices.ecourts.gov.in/hcservices/>



2. Learned counsel appearing for the petitioner argued that the petitioner was booked for the offence under Sections 147, 148, 302 and 506(ii) IPC and he has been undergoing incarceration from 12.03.2019 in Central Prison, Madurai. The petitioner had moved bail application before the Vacation Court of Sessions Judge in CrI.M.P.No.342 of 2019, but, the same was dismissed by the Court concerned on 29.05.2019. Thereafter, he moved another bail application in CrI.M.P.No.2129 of 2019 before the learned Principal District and Sessions Judge, Madurai and the same is pending. When the bail application of the petitioner is pending for disposal, the second respondent has hurriedly passed the impugned detention order dated 10.06.2019 branding him as Goonda under Section 2(f) of the Tamil Nadu Act 14 of 1982 on the ground that there is a possibility of the detenu coming out on bail through the pending bail application before the court concerned in the ground case as the Court concerned has also granted bail in a similar case.

3. Learned counsel for the petitioner further submitted that when the petitioner was tried for the offence under Sections 147, 148, 302 and 506(ii) IPC and after remanding him, it is not open to the second respondent to pass any detention order, branding them as Goonda under Section 2(f) of the Act 14 of 1982. The learned counsel for the petitioner, by relying upon the Judgment of the Hon'ble Supreme Court, reported in **2011 (5) SCC 244 (Rekha vs. State of Tamil Nadu through Secretary to Government and another)**, submitted that the Hon'ble Apex Court, in the case of **Biram Chand vs. State of Uttar Pradesh**, reported in **1974 4 SCC 573**, has held that the authorities cannot take recourse to criminal proceedings as well as pass a preventive detention order on the same facts. Therefore, the detention order is liable to be quashed.

4. Learned Additional Public Prosecutor submitted that it is not an ordinary case. Originally, the detenu along with other accused, on 11.03.2019, stabbed one Alaguraja with knife indiscriminately at his hip, stomach and face, due which he died and therefore, he was remanded in the ground case in Cr.No.112/2019, under Sections 147, 148, 302 and 506(ii) IPC. Thereafter, the petitioner moved a bail application in Cr.M.P.No.342 of 2019, which was dismissed by the learned Vacation Sessions Judge on 29.05.2019. The petitioner also moved second bail application before the Principal District Sessions Judge, Madurai, in Cr.M.P.No.2129/2019 and the same is pending. In a similar case, one accused Sekar was granted bail by the learned Principal Sessions Judge, Madurai. Hence, there is a real possibility of the petitioner coming out on bail through the



pending bail application before the Court concerned in the ground case, since in a similar case bail was granted by the Court concerned to the accused, the detention order has been passed by the second respondent. The subjective satisfaction is sufficiently reached in the detention order. Therefore, no interference is called for.

5. We are unable to accept the reasonings given by the learned Additional Public Prosecutor, the reason being the Hon'ble Apex Court in the case of ***Rekha vs. State of Tamil Nadu through Secretary to Government and another***, reported in **2011 (5) SCC 244**, relied upon its Judgment, in the case of ***Biram Chand vs. State of Uttar Pradesh***, reported in **1974 4 SCC 573**, wherein it was held that the authorities cannot take recourse to criminal proceedings as well as pass a preventive detention order on the same facts, but, held that it is this view which was reversed by the Constitution Bench decision in ***Haradhan Saha Case*** (reported in **1974 SCC (Cri) 816**); this does not mean that the Constitution Bench laid down that in all cases the authorities can take recourse to both criminal proceedings as well as a preventive detention order even though in view of the Court the former is sufficient to deal with the situation. It is necessary to extract the relevant portions of the said Judgment:

"32, In *Biram Chand case*, this Court held that the authorities cannot take recourse to criminal proceedings as well as pass a preventive detention order on the same facts (vide para 15 of the said decision). It is this view which was reversed by the Constitution Bench decision in *Haradhan Saha case*. This does not mean that the Constitution Bench laid down that in all cases the authorities can take recourse to both criminal proceedings as well as a preventive detention order even though in the view of the Court the former is sufficient to deal with the situation. This point which we are emphasising is of extreme importance, but seems to have been overlooked in the decisions of this Court.

33.

34. Hence, the observation in SCC para 34 in *Haradhan Saha case* cannot be regarded as an unqualified statement that in every case where a person is liable to be tried, or is actually being tried, for a crime in a criminal court a detention order can also be passed under a preventive detention law."

6. Moreover, the Hon'ble Apex Court, in the case of ***Huidrom Konungjao Singh v. State of Manipur and others***, reported in **(2012) 7 SCC 181**, held that 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.

7. 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, because the accused released in that case on bail had no concern with the present case, more so, merely, because somebody else in similar case had been granted bail, there could be no presumption, as arrived at by the second respondent in the instant case, had the detenu applied for bail, he could be released on bail. Therefore, the impugned detention order based on mere *ipse dixit* statement in the grounds of detention cannot be sustained in the eye of law.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention passed in No.30/BCDFGISSSV/2019 dated 10.06.2019 by the second respondent is set aside. The detenu, namely, Balamurugan, Son of Chellasamy, aged about 24 years, is directed to be released forthwith, unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To

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