



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD)No.546 of 2019

K.Senthil Kumar

: Petitioner

Vs

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

2.The District Magistrate & District Collector,
Pudukkottai District,
Pudukkottai.

3.The Superintendent of Prison,
Central Prison
Trichy.

: 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 Detention Order P.D.O.No.9/2019, dated 16.05.2019, quash the same and direct the respondents to produce the person or body of the detenu Kadappan, S/o.Karuppan, aged about 66 years, (now detained at Central Prison, Trichy) before this Court and set him at liberty.

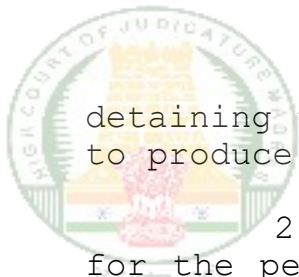
For Petitioner : Mr.C.Mayilvahana Rajendran for
Mr.K.Kulanthai Vikram

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

O R D E R

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

Mr.K.Senthil Kumar, the son of the detenu namely Kadappan, aged about 66 years, has come to this Court, assailing the correctness of the impugned order of detention, dated 16.05.2019 passed by the District Magistrate & District Collector, Pudukkottai,

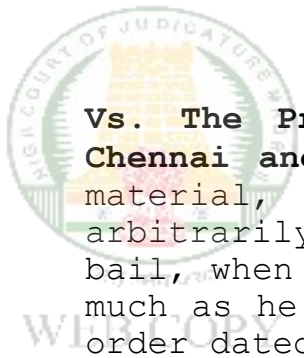


detaining the detenu Kadappan at the Central Prison, Trichirappalli to produce the detenu and set him free.

2. Assailing the correctness of the order, learned counsel for the petitioner argued that this is the sole case on which, the detenu was arrested and subsequently was detained, therefore, when the detenu was arrested in the ground case, he has moved an application for bail before the Thirumayam All Women Police Station Cr.No.2/2019 under Sections 5(k), 5(l) (6) of Protection of Children from Sexual Offences Act, 2012 and 506(i) I.P.C A 5(k), 5(l) r/w 6 of Protection of Children from Sexual Offences Act, 2012 & 506(i) I.P.C and 3(1)(W)(i) and 3(2)(v) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 before the Mahila Court Judge, Pudukkottai vide Crl.MP.No.166/2019 and the same was dismissed on 10.04.2019. He has also filed another bail petition before the High Court of Madras, Madurai Bench vide Crl.O.P.(MD).No.5925/2019 and the same was dismissed on 25.04.2019. Again, he has filed another bail petition before the High Court of Madras, Madurai Bench vide Crl.O.P.(MD).No.6963/2019 and the same was dismissed on 09.05.2019. Thereafter, the detenu has not moved any such application seeking renewal of his prayer for grant of bail. Whereas the impugned order has been passed holding that there is every possibility for the detenu to get enlarged on bail, as though the petitioner has not moved any application and he is going to get bail. It shows that there is non-application of mind and there is no subjective satisfaction, while passing the impugned order. It is an admitted case on record that when the detenu has not moved any application for taking out him on bail before any Court, the impugned order is liable to be set aside.

3.Learned counsel for the petitioner argued that the reason cited by the Detaining Authority that the detenu is likely to be enlarged on bail, clearly shows that the Sponsoring Authority foisted a false case against the detenu and even the representation given before the Detaining Authority also has not been considered sofar.

4.Continuing his argument, the learned counsel has stated that just two days prior to the arrest, the detenu was taken to the Police Station under the guise of enquiry and where, he was kept under the custody illegally and the Sponsoring Authority arrested him on 22.03.2019 and thereafter, he was remanded to judicial custody and when he was produced before the Mahila Judge, he informed about the illegal custody of the Sponsoring Authority. But, surprisingly and ironically, the remand order dated 22.03.2019, being a vital document was not placed before the Detaining Authority/ the second respondent herein. Even without the remand order, the second respondent passed the impugned order, which is illegal. In support of his submission, he has also produced an order of this Court in the case of **H.C.P. (MD) .No.1100 of 2019 (Radha**



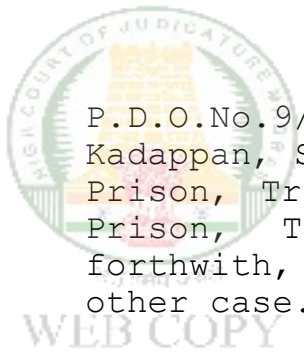
Vs. The Principal Secretary to Government, State of Tamil Nadu, Chennai and two others), dated 10.10.2019 to say that without any material, the Detaining Authority cannot come to any conclusion arbitrarily that there is a real possibility of detenu coming out on bail, when there is no such possibility of coming out on bail, in as much as he has not even moved any bail application, after dismissal order dated 09.05.2019.

5.Reiterating his argument, the learned counsel for the petitioner would submit that between 09.05.2019 till 16.05.2019, the petitioner or on his behalf, no application has been moved for enlarging the detenu on bail. Therefore, one of the grounds mentioned in the detention order that the detenu is likely to come out on bail is a deliberate misrepresentation. Hence, he prayed for setting aside the impugned order and that the detenu deserves to be enlarged on bail.

6.Learned Additional Public Prosecutor also submitted before us that the detenu has not moved any bail application between 09.05.2019 till 16.05.2019, after the dismissal of two bail applications by this Court, one on 25.04.2019 and another one on 09.05.2019.

7.The learned counsel for the petitioner also demonstrated before us that no application seeking bail was filed or pending between 09.05.2019 till 16.05.2019. Therefore, the contention made by the petitioner that there is a total non-application of mind on the part of the Detaining Authority in passing the impugned detention order holding that there is a real possibility of the detenu coming out on bail deserves to be accepted. This view has been taken by this Court in the order passed in **H.C.P.(MD).No.1100 of 2019 (Radha Vs. The Principal Secretary to Government, State of Tamil Nadu, Chennai and two others), dated 10.10.2019**, wherein, it is held that without any material, the Detaining Authority cannot come to the conclusion that there is real possibility of the detenu coming out on bail, where there is no bail application filed or pending. 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 or justification to conclude that there is a likelihood of the detenu being released on bail, there is no bail application pending on the date of passing this impugned detention order. Moreover, the details of any such bail application has not been furnished. Therefore, such a bald statement of the Detaining Authority cannot be believed.

8.In view of the above reasons mentioned, this petition is allowed and impugned detention order passed by the 2nd respondent in
<https://hcservices.ecourts.gov.in/hcservices/>



P.D.O.No.9/2019, dated 16.05.2019 is set aside and the detenu Kadappan, S/o.Karuppan, aged about 66 years, now detained at Central Prison, Trichy is set at liberty. The Superintendent of Central Prison, Trichy/third respondent is directed to release him forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

vs

To

- 1.The Secretary to Government
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai-09.
- 2.The District Magistrate & District Collector,
Pudukkottai District,
Pudukkottai.
- 3.The Superintendent of Prison,
Central Prison
Trichy.
4. The Joint Secretary to Government,
Public(LAw &Order),
Fort Saint George, Chennai
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.546 of 2019
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