



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.1817 of 2018

S.Kalavathi

... Petitioner

-vs-

1. State of Tamil Nadu

Rep.by the Principal Secretary to Government

Home, Prohibition and Excise Department

Fort.St.George, Chennai-600 009

2. The District Collector and District Magistrate

Kanniyakumari District, Nagercoil

3. The Superintendent of Prison

District Prison and Borstal School

Pudukottai, Pudukottai District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order passed in P.D.No.63/2018, dated 23.11.2018, on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Ramesh, aged about 20 years, son of Krishnan, now detained at District Prison and Borstal School, Pudukottai, Pudukottai District, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.M.Chandrasekaran

Additional Public Prosecutor

O R D E R

[Order of the Court was made by B.PUGALENDHI, J.]

The second respondent clamped an order of detention on 23.11.2018, as against Ramesh, son of Krishnan, as the said Authority arrived at the subjective satisfaction that the said detenu is a 'Goonda' and he has to be detained under Section 3(1) of Tamil Nadu Act 14 of 1982 with a view to prevent him from acting prejudicial to the interest of public health and public order.

<https://hcservices.ecourt2gov.in/Cases> Challenging the order of detention, the mother of the detenu has come forward with the present habeas corpus petition.



3. Heard Mr.N.Pragalathan, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents and carefully perused the records.

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there was non-application of mind on the part of the detaining authority. According to the learned counsel, in Paragraph No.4 of the impugned detention order, the detaining authority has stated that the accused Ramesh was arrested on 24.09.2018 at 12.45 hours near Railway Station Road, Sakthi Nagar and duly produced before the Judicial Magistrate No.II, Nagercoil, on the same day at 11.55 p.m., and remanded upto 08.10.2018 and lodged in District Jail, Nagercoil, as a remand prisoner. His remand period was extended till 27.11.2018. Further, the accused Ramesh is under judicial custody in the ground case in Kottar Police Station Crime No.410 of 2018 under Sections 341, 294 (b), 387, 307 and 506(II) I.P.C., and the previous case in Kottar Police Station Crime No.409 of 2018 under Sections 341 and 302 I.P.C. So far, no bail application has been filed on behalf of the accused Ramesh. As far as the ground case is concerned, in a similar case registered in Nesamony Nagar Police Station in Crime No.91 of 2018, under Sections 147, 148, 294(b), 307, 506(II) @ 147, 148, 294(b), 307, 506(II) r/w 34 I.P.C., the accused Subin was released on bail. Hence, the detaining authority has stated that there is a real possibility of the detenu coming out on bail by filing bail applications for the above case before the appropriate court. Thus, according to the learned counsel, there is non-application of mind on the part of the detaining authority.

5. As rightly contended by the learned counsel for the petitioner, the detenu has not filed any bail application for the abovesaid case, however, the detaining authority, in the impugned detention order, has held that there is a real possibility of the detenu coming out on bail by filing bail applications for the above said case before the appropriate court, inasmuch as the similarly placed person was granted bail. Even in the vernacular order, the same averment has been made. That apart, the detaining authority has not given any material to show that there is every likelihood of the detenu being released on bail in the cases cited supra.

6. At this juncture, it would be relevant to refer to the decision of the Supreme Court in **Rekha vs. State of Tamil Nadu**, [2011 (5) SCC 244], wherein, in Paragraph No.27, it has been held as follows:

"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. However, details of such alleged similar cases must be given, otherwise the bail statement of the authority cannot be believed."

Thus, on the above sole ground alone, the impugned detention order is liable to be set aside.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in P.D.No.63/2018 dated 23.11.2018, passed by the second respondent, is set aside. The detenu, namely, Ramesh, son of Krishnan, aged about 20 years, is directed to be released forthwith unless his detention is required in connection with any other case.

sd/
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai-600 009.
2. The District Collector and District Magistrate,
Kanniyakumari District, Nagercoil.
3. The Superintendent of Prison,
District Prison and Borstal School,
Pudukottai, Pudukottai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Krk
MK/15.05.2019/3P/5C

H.C.P. (MD) No.1817 of 2018
26.04.2019