



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD) No.1823 of 2018

Shenbagapriya

... Petitioner

-vs-

1.State of Tamil Nadu, rep.by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai-9.

2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Sivaganga District, Sivaganga.

3.The Superintendent,
Central Prison,
Tiruchirappalli .

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records in detention order passed in Cr.M.P.No.39/Goonda/2018 dated 30.11.2018 on the file of the 2nd respondent herein and set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely Karuppaiah, son of Vellaisamy, male, aged 32 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner :Mr.K.A.S.Prabhu

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 30.11.2018, as against Karuppaiah, son of Vellaisamy, 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 the Prevention of Evil Influences Act, 1944 of 1982 with a view to prevent him from acting prejudicial to the interest of public health and public order.



2. Challenging the order of detention, the wife of the detenu has come forward with the present habeas corpus petition.

3. Heard Mr.K.A.S.Prabhu, learned counsel appearing for the petitioner and Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the respondents.

4. The learned counsel for the petitioner would submit that there is total non-application of mind on the part of the detaining authority in passing the detention order, as, according to him, no bail application was pending in the ground case at the time of passing the detention order. However, the detention order has been passed by placing reliance upon the bail order granted to the similarly placed person in some other case and stated that there is likelihood of the detenu coming out on bail in the ground case also. 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, no bail application was pending in the ground case at the time of passing the impugned detention order. However, the detaining authority proceeded further to express subjective satisfaction that there was real possibility of the detenu coming out on bail, which shows total non-application of mind. Such a comparison of bail order passed in some other case, when no bail application was pending in the ground case, to express subjective satisfaction of the real possibility of the detenu coming out on bail is against the dictum laid down by a Larger Bench of the Supreme Court in ***Rekha vs. State of Tamil Nadu [(2011) 5 SCC 244]***, followed by a Division Bench of the Supreme Court in ***Huidrom Konungjao Singh vs. State of Manipur and others [(2012) 7 SCC 181]*** and by this Court in an unreported decision in ***H.C.P.(MD) No.1567 of 2015 [Sri Devi vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others]***, vide order dated **14.12.2015**. Therefore, on this sole ground alone, the impugned detention order is liable to be set aside.

6. The detention order passed by the second respondent detaining the detenu Karuppaiah, son of Vellaisamy, made in Cr.M.P.No.39/Goonda/2018, dated 30.11.2018, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith unless his custody is required in any other case.

Sd/-

Assistant Registrar ()

// True Copy //



To:

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai-9.
 - 2.The District Collector and District Magistrate,
O/o.The District Collector and District Magistrate,
Sivaganga District, Sivaganga.
 - 3.The Superintendent,
Central Prison,
Tiruchirappalli.
 - 4.The Joint Secretary to Government of Tamil Nadu,
Public(Law and Order) Department,
Fort.St.George, Chennai-9.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 CC to M/s.K.A.S.PRABHU, Advocate SR-61840.

H.C.P. (MD) No.1823 of 2018
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CS: (31/05/2019) 3P 7C