



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.1830 of 2018

V.Kaliappan

... Petitioner

-VS-

1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009

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

3.The Superintendent of Prison
Palayamkottai Central Prison
Tirunelveli 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 of the Respondent No.2, in M.H.S.Confdl No.149/2018, dated 12.12.2018 and quash the same and direct the respondents to produce the body or person of the detainee by name Asaithambi, son of Kaliappan, aged about 26 years, now detained at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

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 12.12.2018, as against Asaithambi, son of Kaliappan, 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.

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

3. Heard Mr.R.Alagumani, 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.6 of the impugned detention order, the detaining authority has stated that anticipatory bail was granted to the detenu by the learned Sessions Judge, Tirunelveli, in Cr.M.P.No.2694 of 2017, on 20.06.2017, in Veeravanallur Police Station Crime No.140 of 2017 and bail was granted to him by the learned Judicial Magistrate, Cheranmahadevi, in Cr.M.P.No.4929 of 2018, on 05.10.2018, in Veeravanallur Police Station Crime No.303 of 2018. Further, the detenu Asaithambi, who is in remand in Kadayam Police Station Crime No.252 of 2018, has not filed any bail application so far. However, the detaining authority has stated that there is a real possibility of the detenu coming out on bail by filing bail application for the above case before the appropriate court, since bail was granted to the similarly placed persons. 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 application 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 M.H.S.Confdl No.149/2018, dated 12.12.2018, passed by the second respondent, is set aside. The detenu, namely, Asaithambi, son of Kaliappan, aged about 26 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

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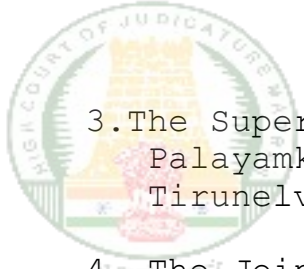
Sub Assistant Registrar (CS-)

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To:

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.

2.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.



3. The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort.St.George, Chennai -9.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

H.C.P. (MD) No.1830 of 2018
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