



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.1689 of 2018

Kabilan

... Petitioner

-vs-

1.The Principal Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George, Chennai-600009

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

3.The Superintendent of Prison
Trichy Central Prison, Trichy ... 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 Cr.M.P.No.33/2018 dated 14.11.2018 and quash the same and direct the Respondents to produce the body or person of the detenu by name Kabilan, son of Narayanan, aged about 22 years, now confined at Trichy 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 14.11.2018, as against Kabilan, son of Narayanan, 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 detenu has come
<https://hcservices.mca.gov.in/hcservices/> 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.5 of the impugned detention order, the detaining authority has stated that the detenu, who is in remand in Perambalur Police Station Crime Nos.693 of 2018 and 694 of 2018, filed bail application for Perambalur Police Station Crime No.693 of 2018, before the learned Judicial Magistrate, Perambalur, in Cr.M.P.No.3553 of 2018 and the same was dismissed on 09.11.2018. Further, he filed bail application for Perambalur Police Station Crime No.694 of 2018, before the learned Principal District and Sessions Judge, Perambalur, in Cr.M.P.No.1084 of 2018 and the same was dismissed on 08.11.2018. In a similar case registered in Perambalur Police Station Crime No.48 of 2017, under Sections 341, 294(b), 387, 323 and 506(II) I.P.C., bail was granted to the accused therein, by name, Vinoth, who was remanded on 15.01.2017, by the learned Judicial Magistrate, Perambalur, in Cr.M.P.No.203 of 2017, on 23.01.2017. 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 cases 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 case in Perambalur Police Station Crime No.694 of 2018 relates to the offences under Sections 294(b), 341, 392, 397 and 506(II) I.P.C., whereas, the case in Perambalur Police Station Crime No.48 of 2017, in which the accused Vintoth was granted bail by the learned Judicial Magistrate, Perambalur, relates to the offences under Sections 341, 294(b), 387, 323 and 506(II) I.P.C. The offences, for which, the detenu is charged are the sessions offences, whereas, the offences for which, Vinoth was charged relate to magistrial offences. That apart, the bail applications filed by the detenu were dismissed and no fresh bail application was pending at the time of passing the impugned detention order. Therefore, there is no imminent possibility of the detenu coming out on bail.

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 Cr.M.P.No.33/2018 dated 14.11.2018, passed by the second respondent, is set aside. The detenu, namely, Kabilan, son of Narayanan, aged about 22 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Principal Secretary to Government 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,
Perambalur District, Perambalur.
- 3.The Superintendent of Prison,
Trichy Central Prison, Trichy.
- 4.The Joint Secretary to Government,
Public(Law and Order),
Fort St.George,
Chennai 9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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