



WEB COPY

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.1697 of 2018

Mano @ Usman

... 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
Central Prison
Palayamkottai, Tirunelveli

... 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.61/2018 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 Mano @ Usman, aged about 30 years, S/o.Sudalayandi, now detained at Central Prison, Palayamkottai, 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 Mano @ Usman, son of Sudalayandi, 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.ecourts.gov.in/hcservices/>

2. Challenging the order of detention, 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.

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 Mano @ Usman, son of Sudalayandi, made in P.D.No.61/2018, dated 23.11.2018, 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 (CO)

/ True Copy /

Sub Assistant Registrar(CS)

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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,
Central Prison,
Palayamkottai, Tirunelveli.
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.1697 of 2018
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