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H.C.P(MD)No.651 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD)No.651 of 2019

S.Murugesan

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus to call for the entire records connected with the detention order passed in H.S.(M) Confdl.No.34/2019 dated 28.06.2019 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu namely the petitioner's son Maheshkumar @ Mahesh, aged about 29 years, S/o. Murugesan, now detained at Central Prison, Palayamkottai, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

* * * * *

ORDER

(Order of the Court was made by **T.RAJA, J.**)

The petitioner is the mother of the detenu viz., Maheshkumar @ Mahesh, Son of Murugesan, and challenging the legality of the impugned order of detention dated 28.06.2019, passed by the second respondent, under Section 3(1) of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders,



Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982, (Tamil Nadu Act 14 of 1982) and branding him as 'Goonda' in H.S.(M) Confdl.No.34/2019, came forward to file the present Habeas Corpus Petition.

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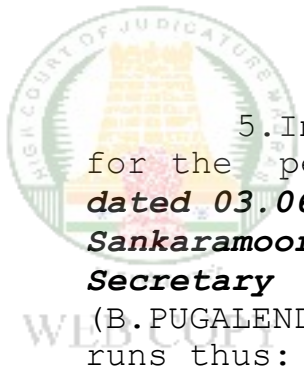
2.A perusal of the Grounds of Detention dated 28.06.2019, passed by the 2nd respondent herein, would disclose among other things that the detenu, viz.,Maheshkumar @ Mahesh came to the adverse notice in the following case:-

Sl. No.	Name of the Police Station and Crime No.	Section of Law
1.	Kovilpatti West Police Station Cr.No.263 of 2019	U/s 302 I.P.C. @ 147, 148, 120(B), 302 I.P.C.

It is further stated in the grounds of detention that the detenu was involved in a case for the commission of offences under Sections 341, 294(b), 307 and 506(ii) I.P.C. in Kovilpatti West Police Station Crime No.267 of 2019 (ground case). The detenu was arrested on 02.06.2019 and produced before the Court of Judicial Magistrate No.2, Kovilpatti on 03.06.2019 and remanded to judicial custody. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petition has been filed by the petitioner.

3.We have heard Mr.N.Pragalathan, learned counsel appearing for the petitioner and Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

4.Learned counsel appearing for the petitioner has drawn the attention of this Court to paragraph No.7 of the grounds of detention and would submit that though the detaining authority has noted pretty well that in the adverse case as well as in the ground case the detenu is in remand and he has not filed any bail petition so far, in order to derive the subjective satisfaction that there is imminent possibility of the detenu coming out on bail, which is prejudicial to the maintenance of public order and public health, no material or whatsoever has been produced by the sponsoring authority before the detaining authority and in the absence of such material the derivation of subjective satisfaction in that regard is vitiated and hence, prays for quashment of the impugned order of detention.

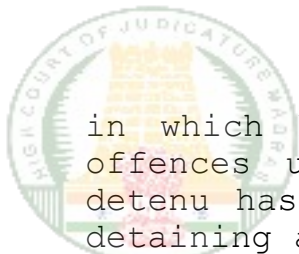


5. In support of his submission, the learned counsel appearing for the petitioner has relied on an unreported order of this Court dated 03.06.2019 made in **H.C.P. (MD) No.1745 of 2018** in the matter of **Sankaramoorthy v. State of Tamil Nadu, rep. by The Principal Secretary to Government and two others**, in which one of us (B.PUGALENDHI, J) was a party. The relevant portion of the order runs thus:

"6. As rightly pointed out by the learned counsel for the petitioner, the detenu is in custody in connection with the ground case in Crime No.206 of 2018 on the file Radhapuram Police Station and he did not file any bail application in the ground case. The sponsoring authority did not produce any materials to show that there is imminent possibility of the detenu coming out on bail in the ground case. In the absence of such a vital material, by merely citing an similar order in CRMP No.2177/2018 passed by the Judicial Magistrate No.V, Tirunelveli serves no purpose. Therefore, the subjective satisfaction derived in this regard is vitiated. Therefore, this Court is of the view that on this sole ground, the detention order, impugned herein, is liable to be set aside."

6. Though we have heard the learned Additional Public Prosecutor appearing for the respondents, we are unable to find any explanation as to how the detaining authority has arrived at the subjective satisfaction that there is imminent possibility of the detenu coming out on bail, when there is no material produced by the sponsoring authority to substantiate the same. In our considered view, to reach any subjective satisfaction that there is a real possibility of release of the detenu on bail, it must be based on cogent materials and not on the mere *ipse dixit* of the detaining authority. As has been observed by the Supreme Court, the question as to whether there is possibility of being released on bail depends upon several factors, such as nature of offence, the stage of the investigation, the availability of statutory bail as envisaged under Section 167(2) proviso of Cr.P.C.

7. The detenu was arrested in connection with the ground case on 02.06.2019 in Crime No.267 of 2019 for the offences under Sections 341, 294(b), 307 and 506(ii) I.P.C. and remanded to judicial custody on 03.06.2019 and the remand has also been extended periodically. While recording the confession statement, the detenu was also added as accused in Crime No.263 of 2019 for the offences under Sections 302 @ 147, 148, 120(B), 302 I.P.C. In this case also he was arrested on 02.06.2019 and recovery was made on 02.06.2019 and remanded to judicial custody on 03.06.2019. But, while arriving at the subjective satisfaction, the detaining authority has referred to the possibility of the detenu coming out on bail in Crime No.267 of 2019, which was registered for the offences under Sections 341, 294(b), 307 and 506(ii) I.P.C and failed to refer to the other case,



in which he was also remanded in Crime No.263 of 2019 for the offences under Sections 302 @ 147, 148, 120(B), 302 I.P.C. The detenu has not filed any bail application from 03.06.2019, but the detaining authority without any material has stated that he tried to file bail application, without even referring to bail application filed by the detenu, and arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail by referring the ground case alone, when he was also remanded in the adverse case in Crime No.263 of 2019 for the offences under Sections 302 @ 147, 148, 120(B), 302 I.P.C. Accused released in that case on bail had no concern with the present case, more so, merely, because somebody else in similar case had been granted bail, there could be no presumption, as arrived at by the second respondent in the instant case, had the detenu applied for bail, he could be released on bail. Therefore, the impugned detention order based on mere *ipse dixit* statement in the grounds of detention cannot be sustained in the eye of law. Hence, the subjective satisfaction arrived by the detaining authority that there is real possibility of the detenu coming out on bail is vitiated and on this ground the impugned order of detention is liable to be set aside.

8.In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the second respondent herein, namely, the District Collector, Thoothukudi District, Thoothukudi in H.S.(M) Confdl.No.34/2019 dated 28.06.2019. Consequently, the detenu, namely, Maheshkumar @ Mahesh, son of Murugesan, aged about 29 years, who is now detained at Central Prison, Palayamkottai is directed to be released forthwith unless his presence [or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

sj

To

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

<https://hcservices.ecourts.gov.in/hcservices/>



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

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

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

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

H.C.P(MD)No.651 of 2019
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VB(24.02.2020) 5P 6C