



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.1673 of 2018

Sundaramoorthy

... Petitioner

-vs-

1. The Principal Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai-600 009

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

3. The Superintendent of Prison
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 records pertaining to the impugned detention order passed by the 2nd respondent made in his proceedings in Cr.M.P.No.35/2018 dated 02.11.2018 in detaining the detenu under Section 2(f) of the Tamilnadu Act 14 of 1982 as a Goonda and quash the same and direct the respondents to produce the Detenu namely Duraisamy alias Prasanth s/o.Sundaramoorthy, Male, aged about 25 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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 02.11.2018, as against Duraisamy alias Prasanth, son of Sundaramoorthy, 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.K.M.Karunakaran, 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 Jeeyapuram Police Station Crime No.2 of 2018 and 116 of 2018 and Somarasampettai Police Station Crime Nos.126 of 2018 and 202 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 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 detenu has not filed any bail application for the abovesaid cases, 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 applications for the above said cases before the appropriate court. 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 Cr.M.P.No.35/2018 dated 02.11.2018, passed by the second respondent, is set aside. The detenu, namely, Duraisamy alias Prasanth, son of Sundaramoorthy, aged about 25 years, is directed to be released forthwith unless his detention is required in connection with any other case.

sd/
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-600 009.
2. The District Collector and District Magistrate,
Tiruchirappalli District, Tiruchirappalli.
3. The Superintendent of Prison,
Central Prison, Tiruchirappalli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Joint Secretary to Government,
Public (law&order),
Fort st. George,
Chennai 9

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