



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2020

CORAM:

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.4 of 2020

P.Parvathi

... Petitioner

Vs.

- 1.The 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 Magistrate and District Collector
Theni District, Theni.
- 3.The Superintendent of Prison,
Central Prison,
Madurai.

... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the entire records connection with the detention order passed in Detention order No.30/2019/C3, dated 19.12.2019 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu i.e. the petitioner's sister's son namely, Kasirajan, son of Manoharan, aged about 30 years, now detained at Central Prison, Madurai, before this Hon'ble Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

Heard Mr.N.Pragalathan, learned counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor for the respondents and perused the materials available on record.



2. This habeas corpus petition has been filed by the Aunty of the detenu, namely, Kasirajan, son of Manoharan, aged about 30 years, challenging the detention order in No.30/2019/C3, dated 19.12.2019, passed by the second respondent, branding him as "Drug Offender" as contemplated under Section 2(e) of the Tamil Nadu Act 14 of 1982.

3. It is submitted by Mr.N.Pragalathan, learned counsel for the petitioner that though the detention order has been assailed on several grounds, it is liable to be set aside on the ground of non application of mind on the part of the Detaining Authority and failure to intimate the arrest of the detenu in the ground case. According to the learned counsel for the petitioner, the non-intimation of arrest would seriously affect the valuable rights of the detenu to make effective representation to the Authorities concerned for revocation of the detention order. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of ***D.K.Basu vs. State of West Bengal***, reported in ***AIR (1997) SC 610***.

4. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents, while reiterating the counter affidavit filed by the second respondent, would submit that the detention order has been passed by the Detaining Authority after satisfying with the materials placed by the Sponsoring Authority and there is no illegality or irregularity in the impugned detention order. Furthermore, the arrest of the detenu has been properly intimated in accordance with law and hence, the rights of the detenu has not been affected in any manner and hence, prayed for dismissal of the Habeas Corpus Petition.

5. In the matter on hand, it is seen that the detenu was arrested on 05.12.2019 in the ground case and remanded to Judicial custody till 02.01.2020. It appears that the detenu filed a bail petition in the ground case in Cr.M.P.No.5020/2019 and the same is pending for consideration before the Principal Special Court for EC/NDPS Act cases, Madurai. However to arrive at the subjective satisfaction, the Detaining Authority has stated that bails are granted by the competent Courts after lapse of time. Therefore, there is a possibility for the detenu to come out on bail.

6. It is rightly pointed out by the learned counsel appearing for the petitioner that no material is available to show that the detenu is likely to be released on bail. Therefore, the conclusion reached by the Detaining Authority shows lack of non-application of mind on the part of the Detaining Authority.



7. The Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244** has held as follows:

"7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

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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 bald statement of the authority cannot be believed.

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36. It has been held that the history of liberty is the history of procedural safeguards. (See *Kameleshkumar Ishwardas Patel v. Union of India* [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] vide para 49.) These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis



of the nature of the alleged activities of the detenu. As observed in *Rattan Singh v. Stae of Punjab* [(1981) 4 SCC 481 : 1981 SCC (Cri) 853]: (SCC p.483, para 4)

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"4. ... May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus."

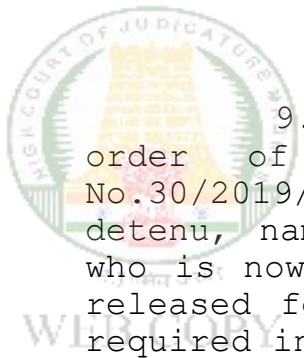
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39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in *Thomas Pelham Dale case* : [(1881) 6 QBD 376 (CA)] (QBD p.461)

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue."

8. Considering the above fact and also taking note of the principal laid down in the above decision, we are of the opinion that the detention order impugned in this habeas corpus petition has been passed without any iota of material and it shows non-application of mind on the part of the Detaining Authority while passing the detention order and hence, the impugned detention order is liable to be set aside.



9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in No.30/2019/C3, dated 19.12.2019, is set aside. Consequently, the detenu, namely, Kasirajan, son of Manoharan, aged about 30 years, who is now detained at Central Prison, Madurai, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

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 Magistrate and District Collector
Theni District, Theni.
- 3.The Superintendent of Prison,
Central Prison, Madurai.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai - 600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.4 of 2020

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