



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.20 of 2020

Noorul Amin

... Petitioner/Father of Detenue
-vs-

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City.

3.The Superintendent of Prison,
Central Prison,
Madurai.

4.The Inspector of Police,
E1 K.Pudur Police Station,
Madurai.

... 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 in No.89/BCDFGISSSV/2019 dated 22.11.2019 on the file of the second respondent and quash the same as illegal and direct the respondents to produce the body or person of the petitioner's son namely, Nizamudeen son of Noorulamin aged about 19 years, now confined at Central Prison, Madurai before this Court and set him at liberty forthwith.

For Petitioner: Mr.K.Navaneetharaja for
Mr.M.U.Shameem John

For Respondents :Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The prayer in the Habeas Corpus Petition is to quash the detention order of the second respondent dated 22.11.2019 passed in No.89/BCDFGISSSV/2019 wherein the petitioner's son namely, Nizamudeen son of Noorulamin aged about 19 years, has been detained under Section 2(f) of the Tamil Nadu Act 14 of 1982 branding him as a "Goonda".

2.Mr.M.U.Shameem John, learned counsel for the petitioner would argue that though the order of detention has been assailed on various grounds, it is liable to be set aside on the sole ground of

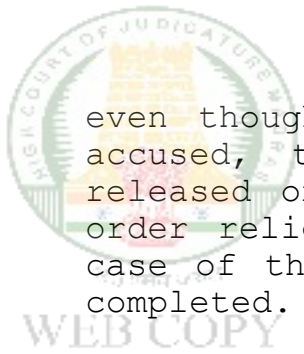


non-application of mind on the part of the detaining authority. It is the submission of the learned counsel for the petitioner that in the instant case, the detenu was arrested on 22.08.2019 and his bail application in Cr.M.P.No.5986 of 2019 was dismissed by the learned Principal Sessions Judge, Madurai on 07.11.2019 and the second application for the bail in Cr.M.P.No.6269 of 2019 is pending consideration. However, the detaining authority to arrive at subjective satisfaction, has relied on the bail granted to one Saravanan, who was an accused in Crime No.729 of 2016 on the file of the Tallakulam Police Station. It is stated that the accused Saravanan was granted bail on the grounds that the investigation in that case was completed and the accused was in custody for more than 85 days. But in the present case, even the detention order also states that the investigation is pending. It is also argued in the case of Saravanan that the co-accused in that case was granted bail by the High Court in CrI.O.P.No.7973 of 2016 dated 21.06.2016 and hence, the case referred by the detaining authority is not similar to the case of the detenu.

3.Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor appearing for the respondents would argue that the detaining authority, namely, the second respondent herein, after being satisfied with the materials produced by the sponsoring authority, has passed the detention order only to prevent the detenu from indulging in similar offence in future, which would prejudice to the maintenance of the public order. He would further state that the delay, if any, in considering the representation would not cause any prejudice to the detenu and there is no infirmity or irregularity in the order of detention passed by the second respondent. Hence, he prayed for dismissal of the Habeas Corpus Petition.

4.We have heard the rival submissions and perused the materials available on records.

5.In the matter on hand, a perusal of the detention order would indicate that the detenu came to be arrested for the solitary case on 22.08.2019 and he was remanded to the judicial custody on 23.08.2019 and his remand was extended till 06.09.2019 and 28.11.2019. It is not in dispute that the bail application filed by the detenu was dismissed in Cr.M.P.No.5986 of 2019 by the Principal Sessions Judge, Madurai on 07.11.2019 and the second application is pending disposal. The detaining authority to reach the subjective satisfaction has referred the bail granted to one Saravanan, who is the accused in Crime No.729/2016 on the file of the Tallakulam Police Station. As rightly pointed out by the learned counsel for the petitioner, a perusal of the order shows that the said Saravanan was granted bail by the learned Principal Sessions Judge, Madurai on the ground that the investigation in that case was completed and he was in custody for more than 84 days and one of the co-accused was granted bail in that case by the High Court. In this case,



even though the criminal case has been registered against the 15 accused, till passing of the detention order, no accused was released on bail. Hence, we are convinced that the similar bail order relied on by the detaining authority is not similar to the case of the petitioner, as in this case, investigation is not yet completed.

6.The Honourable Apex Court in ***Rekha vs. State of Tamil Nadu***, reported in **2011 (5) SCC 244** categorically held that the detaining authority must be convinced that the similar case is that of the case of the detenu. The relevant portion of the said judgement reads 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. State of Punjab* [(1981) 4 SCC 481 : 1981 SCC (Cri) 853]: (SCC p.483, para 4)

"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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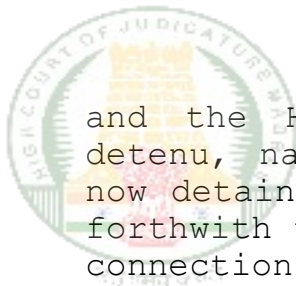
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39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established 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."

7. Following the above said decision of the Honourable Apex Court, we are of the considered opinion that the detention order impugned in this Habeas Corpus Petition is liable to be set aside on the ground of non-applilcation of mind.

8. In fine, the order of detention passed by the second respondent, in No.89/BCDFGISSSV/2019 dated 22.11.2019, is set aside



and the Habeas Corpus Petition is allowed. Consequently, the detenu, namely, Nizamudeen son of Noorulamin aged about 19 years, 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 (CS II)

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Sub Assistant Registrar(CS)

skn

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,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The Joint Secretary to Government, Public (Law and Order),
Fort St.George, Chennai-9
- 3.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City.
- 4.The Superintendent of Prison,
Central Prison,
Madurai.
- 5.The Inspector of Police,
El K.Pudur Police Station,
Madurai.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No.20 of 2020
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