



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD)No.45 of 2020

WEB COPY

Balamurugan, S/o.Ayyanar

... Petitioner

Vs.

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

2.The Chairman,
Advisory Board,
32, Rajaji Salai,
Singaravelar Maligai,
Ground Floor [Backside Entrance],
Chennai Collectorate,
Chennai - 600 001.

3.The Commissioner of Police,
Madurai City,
Madurai.

4.The Inspector of Police,
B3 - Teppakulam Police Station,
Madurai City.

5.The Superintendent of Prison,
Borstal School and District Prison,
Pudukottai,
Pudukkottai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents herein to produce the detenu namely, Balaganesh, aged about 18 years, S/o.Balamurugan, who is termed as ''Goonda'' and who is now detained in the fifth respondent's prison and to call for the entire records relating to the detention order in No.15/BCDFGISSSV/2019, dated 12.02.2019, passed by the third respondent herein and to set aside the same and to set the detenu at liberty.

For Petitioner

: Mr.M.S.Jeyakarthik

For Respondents

: Mr.K.Dinesh Babu

Additional Public Prosecutor

**ORDER**

[Order of the Court was made by **T.RAJA, J.**]

Balamurugan, father of the detenu, viz., Balaganesh, aged about 18 years, has brought this Habeas Corpus Petition under Article 226 of the Constitution of India, to quash the impugned detention order dated 12.02.2019 and a consequential direction to the respondents to produce the detenu before this Court and set him liberty forthwith.

2.Mr.M.S.Jeyakarthik, learned counsel appearing for the petitioner would submit that when there are two adverse cases and one ground case have been registered against the detenu, viz., the first adverse case in Crime No.635 of 2018 on the file of B3 Teppakulam Police Station, for the offences under Sections 147, 148, 294(b), 324 and 506(ii) IPC; the second adverse case in Crime No.1810 of 2018 on the file of V2 Avaniyapuram Police Station, for the offences under Sections 147, 148, 294(b), 341 and 307 IPC; and a ground case in Crime No.954 of 2018 on the file of B3 Teppakulam Police Station, for the offences under Sections 147, 148, 294(b), 341, 302 and 506(ii) IPC, in the first adverse case, which is related to only for the offences under Sections 147, 148, 294(b), 324 and 506(ii) IPC, the detenu got bail and in respect of second adverse case, although the bail application moved on behalf of the detenu before the Judicial Magistrate Court No.VI, Madurai, was dismissed on 23.01.2019 and the second bail application filed on his behalf, is pending disposal. While so, the third respondent has erroneously passed the impugned detention order citing a different case, which is unconnected to the case of the detenu, as a similar case and bail was granted to one accused viz., Sabari @ Prameshwaran @ Prameshkumar in Crime No.963 of 2018, for the offences under Sections 147, 148, 341, 294(b), 307 and 506(ii) IPC, by the learned Principal Sessions Judge, Madurai, on 29.11.2018 and that cannot be equated with the case of the detenu for the following reasons. Firstly, CrI.M.P.No.5835 of 2018 was moved by Sabari @ Prameshwaran @ Prameshkumar for bail after undergoing 140 days of incarceration. Secondly, when the charge sheet was filed, taking note of that vital aspect, the learned Principal Sessions Judge, Madurai, was pleased to grant bail to him, but in the present case, the detenu was inside the jail in the second adverse case from 10.01.2019, therefore, on the date of passing the impugned detention order, the detenu was inside the jail for a period of 34 days. Secondly, the investigation was not completed. Therefore, the second respondent cannot cite CrI.M.P.No.5835 of 2018 granting bail in favour of Sabari @ Prameshwaran @ Prameshkumar on 29.11.2018, as a similar case. Moreover, the detenu is in jail for more than 11 ½ months pursuant to the impugned detention order. Therefore, for want of subjective satisfaction, the impugned detention order is liable to be quashed.



3.Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents would submit that the bail application in Cr.M.P.No.308 of 2019, moved on behalf of the detenu in the second adverse case, was dismissed by the learned Judicial Magistrate No.VI, Madurai, on 23.01.2019 and he has moved another bail application viz., Cr.M.P.No.417 of 2019, which is pending for consideration. Insofar as the similarity cited in the impugned detention order to pass the same is concerned, even in the case, where no charge sheet is filed, bail was granted, therefore, the petitioner cannot assail the impugned detention order on the ground that there is no similarity.

4.But, we are unable to see any merit in the arguments advanced by the learned Additional Public Prosecutor, the reason being, when the detention order was passed on the ground that the learned Principal Sessions Judge, Madurai, has granted bail to one accused viz., Sabari @ Prameshwaran @ Prameshkumar on 29.11.2018, on the premise that the said accused was inside the jail for more than 140 days, besides, charge sheet was also filed and the investigation was over. But, in the present case, the detenu was inside the jail on the date of passing the impugned detention order for only 34 days. In addition thereto, the investigation has not come to an end. Therefore, the similarity issue cited in the impugned detention order has been wrongly invoked, which indicates that the third respondent has not applied his mind to arrive at subjective satisfaction before passing the impugned detention order. On this score, the detention order is liable to fall.

5.In the result, the Habeas Corpus Petition is allowed by setting aside the Order of Detention passed by the third respondent herein, namely, the Commissioner of Police, Madurai City, in No.15/BCDFGISSSV/2019, dated 12.02.2019. Consequently, the detenu, namely, Balaganesh, son of Balamurugan, aged about 18 years, who is now detained at Borstal School and District Prison, Pudukkottai, 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 (CS III)

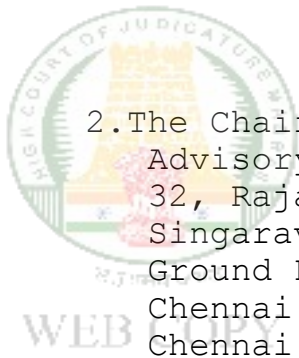
// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

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



2.The Chairman,
Advisory Board,
32, Rajaji Salai,
Singaravelar Maligai,
Ground Floor [Backside Entrance],
Chennai Collectorate,
Chennai - 600 001.

3.The Commissioner of Police,
Madurai City,
Madurai.

4.The Inspector of Police,
B3 - Teppakulam Police Station,
Madurai City.

5.The Superintendent of Prison,
Borstal School and District Prison,
Pudukottai,
Pudukkottai District.

6.The Joint Secretary to Government,
Public(Law and order)Department,
Secretariat, Fort St.George, Chennai -9.

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

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-2598[F] dated 23/01/2020
)

H.C.P. (MD) No.45 of 2020
22.01.2020

KK/04.03.2020/4P-9C