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H.C.P(MD) No.284 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.284 of 2020

M.Gowri

... Petitioner/wife of the detenu

Now the Petitioner's husband namely,
Murugan has been detained at Central Prison,
Madurai in TPDA No.7127/Goonda/2020.

-VS-

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Home, Prohibition and Excise (IX) Department, Fort St.George,
Secretariat
Chennai -600 009.

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

3.The Jailor,
Central Prison,
Madurai.

... 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 detention order, dated 19.3.2020 passed by the second respondent in her proceedings in Detention Order No.11 of 2020, quash the same and to direct the respondents herein to produce the body of the detenu, namely O.Murugan, aged about 40 years, husband of the Petitioner, now confined at Central Prison, Madurai before this Court and set him at liberty.

For Petitioner : Mr.G.Rajan

For Respondents : Mr.R.Anandharaj

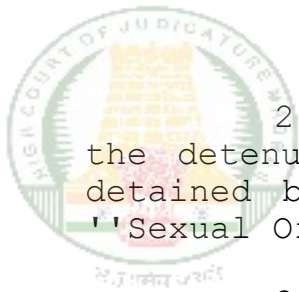
Additional Public Prosecutor

O R D E R

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

Heard Mr.G.Rajan, 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.

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



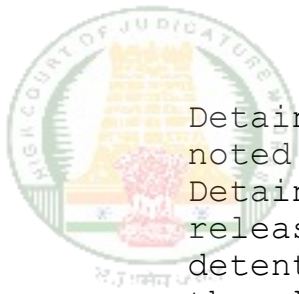
2.This Habeas Corpus Petition has been filed by the wife of the detenu namely, Murugan, aged about 40 years, wherein, he was detained by the order of the second respondent branding him as 'Sexual Offender'.

3.It is the submission of the learned counsel for the Petitioner that admittedly on the date of the detention order, no bail petition was filed in the criminal case, on the basis of which, the Detention Order was passed and hence the subjective satisfaction arrived at by the Detaining Authority is without any materials. According to the learned Counsel, if the detenu has not moved any bail petition, there is no possibility for him to coming out from jail to indulge in any offence, which may be prejudicial to the maintenance of the public order. In this regard, the learned counsel referred to the decision of the Apex Court in the case of (***Rekha.2019 SCC Online SC 1498***).

4.Per contra, the learned Additional Public Prosecutor appearing for the respondednts, while reiterating the counter filed by the second respondent, would argue that it is the settled position of law that there need not be any bail petition on the date of passing of the Detention Order. The view taken by the Honourable Apex Court in ***Rekha's case*** was subsequently over ruled by the Honourable Apex Court in the case of ***2019 SCC Online SC 1498***.

5.In the instance case, the impugned order has been challenged by the wife of the detenu mainly on the ground that the subjective satisfaction arrived at by the second respondent is based on no material. Indisputably, on the date of passing of the Detention Order, no bail petition was filed by the detenu in the criminal case. It is true that the Honourable Apex Court in the case relied on by the learned counsel for the Petitioner, had taken a view if there is no bail petition, there is no question of detenu coming out on bail and hence the subjective satisfaction reached by the Detaining Authority is without any basis.The said view taken by the Honourable Apex Court in the case of ***Rekha's case*** and ***T.V.Saravanan's Case*** reported in ***2011(5) SCC 244 and 2006(2)SCC 664*** have been subsequently over-ruled by the Honourable Apex Court in the case of ***Union of India, through the Joint Secretary(COFEPOSA), Ministry of Finance, New Delhi .vs. Ankit Ashok Jalan reported in 2019 SCC Online SC 1498***, wherein, it has been held as follows:

"45.In the case of Noor Salman Makani (supra), a submission was made regarding nonapplication of mind by the Detaining Authority with regard to the circumstance that the detenu was in jail and a mere bald statement that the possibility that the detenu was likely to be released on bail cannot be ruled out is not enough and it only shows that there was no proper application of mind. This Court did not accept the said submission and has observed that nothing more could have been said by the



Detaining Authority in this context. It is required to be noted that in the said decision the apprehension of the Detaining Authority came to be true as the detenu was released on bail. This Court refused to set aside the detention order on the aforesaid ground. It appears that the detenus were waiting for the setting aside of the detention orders on the ground that they are in custody and that there is no real apprehension that the detenus are likely to be released on bail.

46.As discussed earlier, the detention orders show the application of mind by the Detaining Authority based on the material available on record, facts and circumstances of the case, nature of activities and propensity of the detenus indulging in such activities. Therefore, in the facts and circumstances of the case, the High Court has erred in setting aside the detention orders on the ground stated hereinabove, namely, that there is a clear lapse and failure on the part of the Detaining Authority, to examine and consider the germane and relevant question relating to the imminent possibility of the detenus being granted bail, while recording its subjective satisfaction and passing the detention orders.

47. A Constitution Bench of this Court in the case of Rameshwar Shaw (supra) has observed and held that the detention of the said person would be necessary after he is released from jail, and if the authority is bona fide satisfied that such detention is necessary, he can make a valid order of detention a few days before the person is likely to be released. It is further observed that "therefore the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case. Following the aforesaid decision of this Court, in the subsequent decision, in the case of N. Meera Rani v. Government of T.N. (1989) 4 SCC 418, in para 22, this Court observed and held as under:

"...Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into



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account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us, to be the correct legal position."

48. Now so far as the reliance placed upon the decisions of this Court in the cases of Rekha (supra) and T.V. Sravanan (supra) by the learned counsel appearing on behalf of the detenus is concerned, at the outset, it is required to be noted that on the facts and circumstances of the case, narrated hereinabove, the aforesaid decisions shall not be of any assistance to the detenus and/or, as such, the same shall not be applicable to the facts of the case on hand. Even in the case of Rekha (supra), the decision of the Constitution Bench of this Court in the case of Rameshwar Shaw (supra) was not placed before the Court for consideration and therefore this Court had no occasion to consider the said decision. It is also required to be noted that even after considering the decision of this Court in the case of Rekha (supra), which has been heavily relied upon by the learned counsel appearing on behalf of the detenus, in the case of Dimpay Happy Dhakad (supra), this Court has observed that even if a person is in judicial custody, he can be put on a preventive detention provided there must be an application of mind by the Detaining Authority that (i) the order of detention validly can be passed against a person in custody and for that purpose it is necessary that the grounds of detention must show whether the Detaining Authority was aware of the fact that the detenu was already in custody; (ii) that the Detaining Authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities; and (iii) the satisfaction of the Detaining Authority that the detenu is already in custody and is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities with the subjective satisfaction of the Detaining Authority.

6. In the light of the latest decision of the Honourable
<https://hcservices.ecoq.gov.in/hcservices/> referred supra, we are not impressed with the



submission made by the learned counsel for the Petitioner and we find no merit and eventually, the Habeas Corpus Petition is dismissed, as devoid of merits.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

vsn

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 Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise (IX) Department,
Chennai -600 009.
- 2.The District Colledtor and District Magistrate,
Theni District.
- 3.The Jailor,
Central Prison,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.RAJAN, Advocate (SR-21641[F] dated 10/11/2020)

H.C.P. (MD) No.284 of 2020
09.11.2020

SV2 (CO)
KB(30.11.2020) 5P 6C