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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

H.C.P. (MD) No. 619 of 2019

Sundaram @ Kalyanasundaram : Petitioner/Detenu

Vs.

1.State of Tamil Nadu
rep. by the Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai.

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

3.The Superintendent of Prison,
Central Prison
Palayamkottai
Tirunelveli : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed in H.S.(M) Confdl No.35/2019 dated 28.06.2019 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Sundaram @ Kalyanasundaram, aged about 24 years, S/o.Muthupandi @ Muthiah, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

(Order of the Court was made by T.RAJA, J.)

Challenging the order of detention passed by the second respondent vide proceedings in H.S.(M) Confdl. No.35/2019 dated 28.06.2019, whereby, the detenu was ordered to be detained under



the provisions of the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", the petitioner/detenu is before this Court with this Habeas Corpus Petition.

2. As per the grounds of detention, dated 28.06.2019, the detenu came under adverse notice in one adverse case in Crime No.172/2016 under Sections 341, 294(b), 387, 506(II) IPC on the file of the Alangulam Police Station and in the ground case, which was registered in Crime No.263/2019 on the file of the Kovilpatti West Police Station, who is the sponsoring authority, for offence under Sections 302 altered into 147, 148, 120(b), 302 IPC.

3. Learned counsel for the petitioner, assailing the impugned order on various grounds, preferred to press one of the grounds that the second respondent, while passing the impugned order of detention, has not applied the subjective satisfaction. The detaining authority, in Paragraph No.3, while stating that the detenu is taking steps to file a bail petition, proceeded to arrive at the subjective satisfaction only on the ground that similarly placed accused person has been granted bail in Crime No.229/2014 under Sections 147, 148, 294(b), 341, 302, 506(ii), 120(b) IPC by the Vacation Principal Sessions Court, Tuticorin in CrI.M.P.No.1265 of 2014. The learned counsel further submitted that the subjective satisfaction has been arrived at by the detaining authority is without any materials for the reason that in the similar case accused Ramakrishnan was in custody for 78 days and he was not present in the scene of occurrence and that he has not used any weapon during the occurrence, therefore, he was granted bail, whereas, in the present case the detenu surrendered before the Court on 03.06.2019 and the detention order was passed on 28.06.2019. The detenu was in custody for 25 days, whereas accused Ramakrishnan was in custody for 78 days. More over, the detenu has not filed any bail application and the detaining authority was also aware of the same. While so, the second respondent cannot say that the detenu has tried to file bail petition in the ground case and there is a real possibility of the detenu coming out on bail. Hence, the impugned order of detention is based on mere *ipse dixit* statement in the grounds of detention and cannot be sustained in the eye of law and therefore, the Detention Order is vitiated.

4. In support of his contention, the learned counsel for the Petitioner relied upon the case of ***Rekha .vs. State of Tamil Nadu, through Secretary to Government and another reported in (2011) 5 SCC 244***, wherein, it has been held as follows:

12. In *Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr.*, (2011) 5 SCC 244, this Court while dealing with the issue held :



"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 alleged 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.....

10.In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

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." (Emphasis added)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar



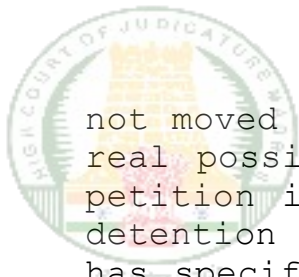
offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

13. So far as the appellant's son is concerned, he had been arrested for the offence related to FIR No.53 (6) 2011 under Section 302 IPC read with Section 25(1-A) Arms Act dated 14.6.2011. The FIR had been lodged against unknown persons, however, appellant's son was arrested on 19.6.2011 in respect of the said offence. Subsequently, the detention order dated 30.6.2011 was passed by the District Magistrate under N.S. Act on various grounds, inter-alia, that the appellant's son was involved in extorting of money and giving shelter to underground members of unlawful association, namely, Kangleipak Communist Party vide notification published in the Gazette of India on 13.11.2009 as his activities were pre-judicial to the security of the State and maintenance of public order.

14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011 under Section 20 of the UA (P) Act and released orders in those cases dated 13.12.2010 and 1.6.2011 respectively had been passed.

15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law.

5. Although we heard the learned Additional Public Prosecutor, we find no reply or suitable explanation as to how the second respondent/Detaining Authority has discussed about the similar case, while passing the detention order. In the similar case, the accused Ramakrishnan was in jail for 78 days, whereas the detenu surrendered on 03.06.2019 and the detention order was passed on 28.06.2019 within a period of 25 days. Secondly, the detenu has



not moved any bail application. Therefore, inferring that there is real possibility of the detenu coming out on bail by filing bail petition is based on mere *ipse dixit* statement in the grounds of detention and that cannot be sustained. The Detaining Authority has specifically stated that the detenu is taking steps to file a bail petition. However, he has arrived at the subjective satisfaction only on the ground that similarly placed accused person was granted the relief of bail by the Sessions Court. The bail order that has been relied upon by the Detaining Authority pertains to the year 2014 and it is seen that the bail order confines itself to the facts of that particular case. The similar case that has been referred in the order of detention is not similar to the facts of the present case. Therefore, the subjective satisfaction arrived at by the Detaining Authority is not supported by any materials and it clearly reflects the non-application of mind. Consequently, the Detention Order stands vitiated. Hence, the same is quashed. Consequently, this Habeas Corpus Petition is allowed. The detenu, namely, Sundaram @ Kalyanasundaram, aged about 24 years, S/o.Muthupandi @ Muthiah, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar(CS-II)

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/ /2020

Sub Assistant Registrar(CS)

RR

To

- 1.The Principal Secretary to Government
Home, Prohibition and Excise Department
Fort St. George, Chennai.
- 2.The District Collector and District Magistrate
Thoothukudi District,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai
Tirunelveli
4. The Joint Secretary to Government,
Public (Law & order), Fort St. George,
Chennai - 9.



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

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Order made in
H.C.P. (MD) No. 619 of 2019
Dated: 20.01.2020

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TR (25.02.2020) 6P 6C