



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **06.01.2020**
CORAM:

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

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P. (MD)No.654 of 2019

Lakshmi, D/o.Rasuthevar ... Petitioner/Brother
Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector & District Magistrate,
Dindigul District,
Dindigul.

3.The Superintendent,
Central Prison,
Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records relating to the detention order passed by the second respondent in Detention Order No.38/2019, dated 30.06.2019, quash the same and direct the respondents to produce the body or person of the detenu namely, Manoj Kumar, S/o.Rasuthevar, aged about 28 years (now detained at Central Prison, Madurai) before this Court and set him at liberty.

For Petitioner : Mr.C.Mayilvahana Rajendran
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

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

Lakshmi, sister of the detenu namely, Manoj Kumar, S/o.Rasuthevar, aged about 28 years, has come to this Court, questioning the validity of the impugned detention order dated 30.06.2019, passed by the District Collector and District Magistrate, Dindigul District, detaining the detenu at the Central Prison, Madurai, to produce the detenu and set him at liberty forthwith.



2.Learned counsel appearing for the petitioner submitted that the Detention Order was passed based on a solitary case that has been registered against the detenu in Crime No.147 of 2019, for the offence under Section 8(c) r/w. Sections 20(b)(ii)(C) and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The learned counsel submitted that the Detaining Authority having stated that the bail petition filed by the detenu in connection with the above said crime number, was dismissed on 19.06.2019 and in a similar case in Crime No.106 of 2013, which is unrelated to the detenu, this Court, vide CrI.O.P.(MD)No.13789 of 2013, has granted bail to the accused therein, namely, Kasi @ Kutta Kasi on 18.09.2013, proceeded to arrive at the subjective satisfaction only on the ground that similarly placed accused person has been granted bail by this Court, hence, there is a real possibility of the detenu coming out on bail by filing bail petition before the Court of law in the above case. The learned counsel further submitted that the subjective satisfaction that has been arrived at by the detaining authority is without any materials and therefore, the Detention Order stands vitiated.

3.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



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.

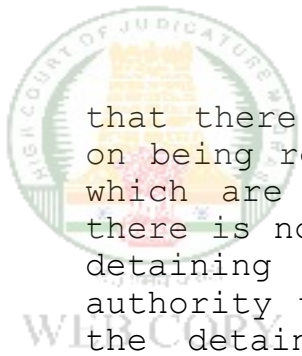


14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011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

4. Learned Additional Public Prosecutor appearing for the respondents submitted that the detaining authority have scrutinized all the materials placed before him, has rightly come to the conclusion that there is a compelling necessity to detain the detenu in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of public order and public health, therefore, he prayed for dismissal of the Habeas Corpus Petition.

5. We have carefully gone through the Detention Order. It is seen that the Detaining Authority has discussed about the case that has been registered against the detenu. The Detaining Authority has specifically stated that the bail petition filed by the detenu in connection with the above said crime number was dismissed on 19.06.2019. However, he has arrived at the subjective satisfaction only on the ground that the similarly placed accused person was granted the relief of bail by this Court. The bail order that has been relied upon by the Detaining Authority pertains to the year 2013 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. The reason being, in the grounds of detention, there is no similar case particulars furnished. As the Hon'ble Apex Court in the case of **Huidrom Konungjao Singh vs. State of Manipur and others** reported in **2012 (7) SCC 181 : 2012 (3) MLJ (Cr1.) 794 [SC]**, has held that there must be cogent material before the detaining authority, on the basis of which, he could have reasons to believe



that there was real possibility of his release on bail and further on being released, the detenu would probably indulge in activities, which are prejudicial to the maintenance of public order and if there is no material produced by the sponsoring authority before the detaining authority, the conclusion arrived at by the detaining authority that the detenu may be released on bail on *ipse dixit* of the detaining authority would indicate the want of subjective satisfaction and that would vitiate the detention order. In the present case also, the detention order clearly reflects the non-application of mind, because no cogent material was placed before the detaining authority, hence, the second respondent has passed the impugned order on mere *ipse dixit*, therefore, the detention order stands vitiated.

6.Resultantly, this Petition stands allowed and the impugned Detention Order No.38/2019, dated 30.06.2019, stands quashed. Consequently, the detenu, namely, Manojkumar, son of Rasuthevar, aged about 28 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/proceedings.

Sd/-

Assistant Registrar (CS-II)

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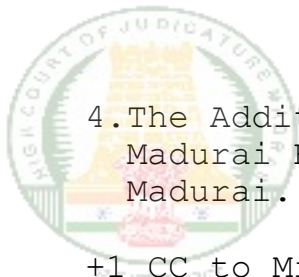
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Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector & District Magistrate,
Dindigul District,
Dindigul.
- 3.The Superintendent,
Central Prison,
Madurai.



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

+1 CC to Mr.C.MAYIL VAGANA RAJENDRAN, Advocate (SR-515[F] dated
07/01/2020)

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06.01.2020

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