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H.C.P(MD)No.730 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P (MD)No.730 of 2019

Alagar

... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by its Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai - 600 009.
- 2.The District Magistrate and District Collector,
Dindigul District,Dindigul.
- 3.The Superintendent,
Central Prison,
Madurai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus calling for the records pertaining to the proceedings of the second respondent made in his proceedings in Detention order No.43 of 2019 dated 16-07-2019 and quash the same and set the petitioner's son by name Karthikeyan @ Apachi Karthick, S/o.Alagar, aged about 23 years at liberty from 3rd respondent.

For Petitioner : Mr.M.Jegadeesh Pandian
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

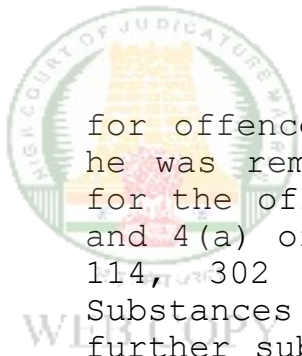
ORDER

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

Mr.Alagar, father of the detenu namely Karthikeyan @ Apachi Karthick, aged about 23 years, has brought this habeas corpus petition, assailing the correctness of the impugned order, passed by the second respondent in his proceedings in Detention order No.43 of 2019 dated 16-07-2019 and quash the same.

2.Learned counsel appearing for the petitioners, assailing the correctness of the impugned detention order, *inter alia*, submitted that when the detenu, who was arrested in the ground case, registered by the Dindigul Taluk Police Station in Cr.No.307/2019

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for offences punishable under Sections 392, 397 and 506(ii) I.P.C, he was remanded in the adverse case, registered in Cr.No.104/2019 for the offences punishable under Sections 302 I.P.C and Sections 3 and 4(a) of Indian Explosives Substances Act, 1908 @ into 147, 148, 114, 302 I.P.C and Sections 3 and 4(a) of Indian Explosives Substances Act, 1908. Continuing his arguments, the learned counsel further submitted that when the first bail application was moved in Crl.M.P.No.2955/2019 before the learned Judicial Magistrate No.I, Dindigul, the same was dismissed on 24.06.2019. Again, he filed another bail petition in Crl.M.P.No.1595/2019 before the learned Principal District and Sessions Judge, Dindigul and the same was pending. Therefore, taking advantage of the pendency of the second bail petition before the Principal District and Sessions Judge, Dindigul filed in Crl.M.P.No.1595/2019, the Detaining Authority relying upon a totally unconnected case as a similar case, namely in the adverse case in Cr.No.104/2019 for the offences punishable under Sections 302 I.P.C and Sections 3 and 4(a) of Indian Explosives Substances Act, 1908 @ into 147, 148, 114, 302 I.P.C and Sections 3 and 4(a) of Indian Explosives Substances Act, 1908, the District Vacation Sessions Judge granting bail to a co-accused one Mani on 28.05.2019 in Cr.M.P.No.176/2019 and also in Cr.No.57/2015 of Palani Taluk Police Station, for the offences punishable under Sections 392 r/w 397 and 506(ii) I.P.C, passed this impugned order. Hence, he seeks quashment of the impugned detention order.

3.Emphasizing on the grounds for passing the impugned detention order, the learned counsel appearing for the petitioner, further submitted that in view of the similar case in Cr.No.104/2019, registered for the offences punishable under Sections 302 I.P.C and Sections 3 and 4(a) of Indian Explosives Substances Act, 1908 @ into 147, 148, 114, 302 I.P.C and Sections 3 and 4(a) of Indian Explosives Substances Act, 1908, the second respondent ought not to have passed the impugned detention order, the reason being, he pleaded that the order copy granting bail by the Judicial Magistrate, Palani in Crl.M.P.No.3237/2015 on 20th April 2015 to the first accused one Revan, S/o.Kanchivanam and the second accused one Sathish Kumar, S/o.Saminathan, was under Section 167(2) Cr.P.C, on each of them executing a bond for a sum of Rs.10,000/- with two sureties each for the likesum to the satisfaction of the Court. But, in the case on hand, the detenu was arrested on 21.06.2019, consequently, the detention order was passed on 16.07.2019. Hence, there is no possibility of the detenu getting released on bail. Therefore, the similar case cited above, as per the ratio laid down by this court in **H.C.P. (MD).No.768 of 2019, dated 10.01.2020**, cannot be rightly relied upon for passing the impugned detention order. It clearly shows that there is want of subjective satisfaction of the Detaining Authority, while passing the impugned detention order. On this score, the impugned order has to be set aside.



4.We have heard Mr.M.Jegadeesh Pandian, 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.

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5.The second respondent has filed a detailed counter affidavit reiterating the points urged in the impugned detention order.

6.The learned Additional Public Prosecutor, opposing the prayer, submitted that the detenu has repeatedly involved in the offences punishable under Sections 392, 397 and 506(ii) I.P.C. Therefore, the first bail application filed before the learned Judicial Magistrate No.I, Dindigul vide Crl.MP.No.2955/2019 was dismissed on 24.06.2019 and the another bail petition, which was moved before the Court of the Principal District and Sessions Judge, Dindigul in Crl.M.P.No.1595/2019 is pending as on date. Therefore, taking note of the similar order passed in Crl.M.P.No.176/2019 by the Court of the learned District Vacation Sessions Judge, Dindigul, apprehending that the detenu is likely to get bail and he will definitely indulge in such further activities, which will prejudice to the maintenance of public and law and order, he pleaded that, no fault can be attributed against the detention order.

7.The submissions made by the learned Additional Public Prosecutor cannot be accepted, the reason being that the statutory bail granted under Section 167(2) Cr.P.C by the learned Judicial Magistrate, Palani in Crl.M.P.No.3237/2015, on 20th April 2015, on the bail petition moved by the first accused one Revan, S/o.Kanchivanam, second accused one Sathishkumar, S/o.Saminathan can never be equated as a similar case. In one of our earlier orders, in **H.C.P. (MD) .No.768 of 2019, dated 10.01.2020**, finding fault with the approach adopted by the Detaining Authority, we held that **"the bail that has been granted in the said similar case is a statutory bail under Section 167(2) of Cr.P.C. and the same cannot be compared or equated with the case of the detenu and hence the subjective satisfaction that has been arrived at by the detaining authority is baseless. On the said sole ground, the order of detention is liable to be interfered with."**

Following the same, we are of the considered view that in the case on hand, as the detention order has been wrongly passed not discharging the subjective satisfaction, the impugned order suffers from subjective satisfaction. On this score, the impugned detention order is liable to be quashed.

8.Accordingly, the impugned detention order, passed by the second respondent in Detention order No.43 of 2019 dated 16-07-2019 is quashed. Consequently, this Habeas Corpus Petition is allowed and the detenu by name Karthikeyan @ Apachi Karthick, S/o.Alagar, aged about 23 years, who is now detained at Central Prison, Madurai is directed to be released forthwith unless his presence



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[or] custody [or] detention is required in connection with any other case/proceedings.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

vs

To

- 1.The Secretary to Government,
State of Tamil Nadu
Government of Tamil Nadu,
Home, Prohibition & Excise Department,
Chennai - 600 009.
 - 2.The Joint Secretary to Government,
Public (Law and Order) Department,
Fort.St.George, Chennai 9.
 - 3.The District Magistrate and District Collector,
Dindigul District,Dindigul.
 - 4.The Superintendent,
Central Prison,Madurai.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 CC to M/s.M.JEGADEESH PANDIAN, Advocate (SR-3691[F]

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28.01.2020

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