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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.02.2020
CORAM:

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

H.C.P. (MD)No.763 of 2019

Annakili : Petitioner
Vs.

1.The State of Tamil Nadu
Rep by its Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai-9.

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

3.The Superintendent,
Central Prison, Madurai,
Madurai District. : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, calling for the entire records relating to the order of detention passed by the 2nd respondent in his proceedings in Detention Order No.41/2019, dated 08.07.2019 branding the petitioner's son/Detenu namely Prabhu Deva aged about 22 years, S/o.Ruthiramoorthi, as Goonda, under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law Offenders, Drug-Offenders, Forest Offenders, Goonda, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-Grabbers and Video Pirates Act 1982 (Tamil Nadu Act 14 of 1982) read with order issued by the Government in G.O.(D)No.97 Home, Prohibition and Excise (XVI) Department, dated 15.04.2019 under Sub-Section (2) of Section 3 of the said Act and quash the same as illegal and direct the respondents to produce the detenu, who is confined in the 3rd respondent's Central Prison, Madurai before this Court and set him at liberty forthwith.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor



ORDER

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

Mrs.Annakili, mother of the detenu namely Prabhu Deva, aged about 22 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.41/2009, dated 08.07.2019 and quash the same.

2.Learned counsel appearing for the petitioner assailing the correctness of the legality of the impugned order *inter alia*, submitted that the detenu has moved his bail petition in the first adverse case in Cr.M.P.No.1298 of 2019 before the learned Judicial Magistrate, Nilakottai and the same was dismissed on 28.06.2019. Again, he filed another bail application in Cr.M.P.No.2059 of 2019 before the learned Judicial Magistrate, Nilakottai and the same was also dismissed on 03.07.2019. In respect of the ground case is concerned, the detenu also moved a bail petition in Cr.M.P.No.1296 of 2019 before the learned Judicial Magistrate, Nilakottai, unfortunately, the same was also dismissed on 17.06.2019. Therefore, the Detaining Authority relying upon a totally unconnected case as a similar case, in Cr.No.57 of 2015 for the offences punishable under Sections 392 r/w 397 and 506(ii) IPC of Palani Taluk Police Station, in which the learned Judicial Magistrate, Palani, granted bail to the co-accused viz., Revan and Satheeshkumar in CR.M.P.No.3237 of 2015 on 20.04.2015, 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.57 of 2015 for the offences punishable under Sections 392 r/w 397 and 506(ii) IPC, the second respondent ought not to have passed the impugned detention order, the reason being, he pleaded that the order granting bail by the learned Judicial Magistrate, Palani, in CRM.P.No.3237 of 2015 on 20.04.2015 to the co-accused viz., Revan and Satheeshkumar was under Section 167(ii)Cr.P.C, on each of them executing a bond for a sum of Rs.10,000/- with two sureties each for a likesum to the satisfaction of the Court, but, in the case on hand, the detenu was arrested on 07.06.2019, consequently, the detention order was passed on 08.07.2019. Hence, there is no possibility of the detenu getting released on bail. Therefore, the similar case cited above, cannot be rightly relied upon for passing the impugned detention order. It clearly shows that there is want of subjective satisfaction on the part of the Detention Authority, while passing the impugned detention order. On this score, the impugned order has to be set aside.



4. We have heard Mr.J.Lawrance, 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.

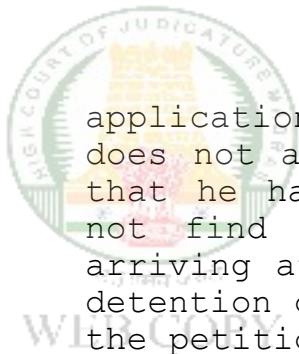
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5. The second respondent has filed a detailed counter affidavit reiterating the points urged in the impugned detention order.

6. The learned Additional Public Prosecutor, opposing the prayer, submitted that the detenu has moved his bail application before the learned Judicial Magistrate not only once but also on three occasions. In respect of the first adverse case is concerned, the detenu has filed bail petition in Cr.M.P.No.1298 of 2019, before the learned Judicial Magistrate, Nilakottai, which was dismissed on 28.06.2019. Again he has moved another bail application in Cr.M.P.No.1297 of 2019 in the second adverse case and again another bail application in Cr.M.P.No.2059 of 2019, which was also dismissed on 03.07.2019. This apart, even in the ground case also, the detenu has moved bail application in Cr.M.P.No.1296 of 2019 before the learned Judicial Magistrate, Nilakottai and the same was dismissed on 17.06.2019. Therefore, when the petitioner has repeatedly approached the learned Judicial Magistrate, Nilakottai as mentioned above. When the petitioner has taken continuous efforts in all the three occasions, we cannot find fault with the Detaining Authority in exercising his power to pass the impugned order branding the detenu as a Goonda.

7. The learned Additional Public Prosecutor further submitted that one complainant viz., Akila, who is working as a data entry operator in the Government Data Centre at Ammaiyanickenur, has given a complaint against the detenu alleging that 6 sovereign of gold jewels were snatched away. Yet another criminal complaint has been given by one Mariammal, W/o.Natarajan, complaining that her Thali Chain, worth about 4 sovereign of gold was also snatched away by the detenu on 31.03.2019. On the basis of the complaints, all the three persons viz., the detenu, Muthuraja and Arul & Arul Joseph, were arrested and on the basis of the confession statement made by one of the co-accused viz., Muthuraja, some gold jewels were recovered from the detenu. Therefore, taking note of the similar order passed by the Court of the learned Judicial Magistrate, Palani, apprehending that the detenu is likely to get bail and he will definitely indulge in such further activities, which will be prejudicial to the maintenance of public order, he pleaded that, no fault can be attributed against the detention order.

8. When the learned counsel appearing for the petitioner argued before us that for the sessions case the detenu has wrongly moved three bail applications before the learned Judicial Magistrate, Nilakottai and all the applications have been dismissed, the Detaining Authority ought not to have taken into account the bail



applications as the steps taken continuously to come out on bail, does not appeal to us, the reason being that it is evidently clear that he has repeatedly moved three applications. Therefore, we do not find any error on the part of the Detaining Authority in arriving at the subjective satisfaction, while passing the impugned detention order. Yet another ground taken by the learned counsel for the petitioner that the statutory bail granted under Section 167(ii) Cr.P.C., by the learned Judicial Magistrate, Palani in Cr.M.P.No.3237 of 2015 on 20th April 2015, on the bail petition moved by the first accused viz., Revan and the second accused viz., Satheeshkumar, can never be equated as a similar case also failed to appeal to us, because, the detenu has involved in several cases and he is in the habit of filing bail applications continuously, therefore, there is a subjective satisfaction discharged by the Detaining Authority, hence, we find no error for interference with the impugned detention order.

9. In view of the above reasons, this Habeas Corpus Petition stands dismissed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-9.
2. The District Magistrate and District Collector,
Dindigul District, Dindigul.
3. The Superintendent,
Central Prison, Madurai,
Madurai District.
4. The Joint Secretary to Govt.,
Public(Law&Order)
Fort st. George, Chennai 9



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

Order made in
H.C.P. (MD) No.763 of 2019
04.02.2020

MK (13.03.2020) 5P 6C