



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.824 of 2019

G.Maharajan

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector/
District Magistrate,
Trichy District.

3.The Superintendent of Central Prison,
Tiruchirappalli District.

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, directing the respondents to produce the body of person of the detenu namely G.Gurubakaran @ Guru, S/O. Gurusamy (Hindu, Male, aged about 48 years) in the present case before this Court and set aside the detention order passed by the second respondent in Cr.M.P.No.38 of 2019, dated 28.07.2019 and set him at liberty.

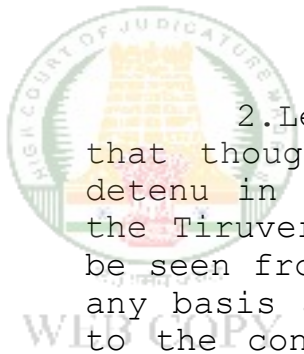
For Petitioner
For Respondents

: Mr.N.Pragalathan
: Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

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

The brother of the detenu is the petitioner herein and challenging the impugned order of detention dated 28.07.2019 passed by the second respondent, branding his brother as a "Goonda" under the provisions of Section 3[1] of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), he has filed the present habeas corpus petition.



2.Learned counsel appearing for the petitioner would submit that though no bail application has been moved on behalf of the detenu in the case registered in Cr.No.228 of 2019 on the file of the Tiruverumbur Police Station, Tiruchirappalli District, it could be seen from the grounds of detention, the second respondent without any basis and based on mere *ipse dixit* statement, has wrongly come to the conclusion that there is a real possibility of the detenu coming out on bail and if he comes out on bail, he will indulge in such further activities in future, which will be prejudicial to the maintenance of public order. Further holding that recourse to normal criminal law would not have the desired effect of preventing him from involving in such activities, the second respondent has wrongly passed the impugned detention order. It clearly indicates the non-application of mind on the part of the Detaining Authority. Hence, he prays for quashment of the impugned order.

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 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.

3. Learned Additional Public Prosecutor appearing for the respondents submitted that the detaining authority after scrutinizing 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, therefore, he prayed for dismissal of the Habeas Corpus Petition.

4. 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 and the Detaining Authority is aware that no bail petition has been filed by the detenu. At this juncture, it is pertinent to mention here the ratio laid down by 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]**, wherein it has been held that 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. In view of the above, we find it difficult to accept the reasonings given by the second respondent to pass the impugned order of detention. Therefore, the subjective satisfaction arrived at by him, having not been supported by any material, clearly reflects non-application of mind. On this score, the detention order stands



vitiated.

6.In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.38/2019, dated 28.07.2019 passed by the second respondent, is set aside. The detenu, namely, Gurubakaran alias Guru, son of Gurusamy, aged about 48 years, who is now detained at Central Prison, Tiruchirappalli, 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 (Crl Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

DSK

To

- 1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
- 2.The District Collector/
District Magistrate,
Trichy District.
- 3.The Superintendent of Central Prison,
Tiruchirappalli District.
- 4.The Joint Secretary to Government,
Public(Law and Order),
Fort St.George, Chennai-9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P(MD)No.824 of 2019

14.02.2020

dsk

KK/13.05.2020/ 5P- 6C