



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2020

CORAM:

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

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

H.C.P. (MD)No.900 of 2019

R.Karthiga

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Principal Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.

3.The Superintendent,
Central Prison,
Tiruchirappalli.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the entire records pertaining to the impugned detention order passed by the second respondent in C.O.C.No.36/2019, dated 16.08.2019, set aside the same as illegal and direct the respondents to produce the body or person of the petitioner's husband namely, Prabu, S/o.Danapal, Male, aged about 37 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.A.S.Prabhu

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



ORDER

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

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R.Karthiga, wife of the detenu namely, Prabu, aged about 37 years, S/o.Danapal, has brought this petition to quash the impugned detention order dated 16.08.2019 on various grounds.

2.Learned counsel appearing for the petitioner would submit that there were three adverse cases and one ground case registered against the petitioner's husband. The sponsoring authority has failed to inform about the arrest of the detenu properly in the ground case as well as all the adverse cases to his family members. The learned counsel would further submit that the subjective satisfaction arrived at by the second respondent for passing the impugned order of detention has not been properly explained by him, for the reason that the detenu had moved a bail petition in Cr.M.P.No.1743 of 2019 before the learned Principal District Munsif, Mayiladuthurai (FAC), Judicial Magistrate Court No.II, Mayiladuthurai, in connection with the ground case and the same was dismissed on 23.07.2019. Further, bail petition in Cr.M.P.No.2338 of 2019, which was filed before the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam (i/c) Sessions Judge, Nagapattinam, was dismissed on 01.08.2019. After dismissal of the bail petitions, it is an admitted case of the petitioner that no bail application has been moved on behalf of the detenu and therefore, there are no circumstances warranting the second respondent to pass the impugned detention order against the detenu entertaining an unreasonable apprehension in his mind that there is a real and imminent possibility of the detenu coming out on bail by filing a bail application for the above case before the higher Court and if he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order and public health. Further holding that recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging 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.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.

<https://hcservices.ecourts.gov.in/hcservices/>



4.It is an admitted case of the petitioner that after dismissal of the first bail petition, the second bail petition in Cr.M.P.No.2338 of 2019 moved on behalf of the detenu in connection with the ground case before the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam (i/c) Sessions Judge, Nagapattinam, was also dismissed on 01.08.2019 and thereafter, no bail application has been moved on behalf of the detenu and therefore, there are no circumstances warranting the second respondent to pass the impugned detention order against the detenu entertaining an unreasonable apprehension that there is a real and imminent possibility of the detenu coming out on bail by filing a bail application for the above case before the higher Court and if he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order and public health. It clearly indicates the non-application of mind on the part of the Detaining Authority.

5.In similar circumstances, 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]**, at Paragraph 6, has held under:-

'6. The expression ''compelling reasons'' in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.'

6.In the light of the above, 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.



7. In the result, the Habeas Corpus Petition is allowed and the order of detention in C.O.C.No.36/2019, dated 16.08.2019, passed by the second respondent, is set aside. The detenu, namely, Prabu, aged about 37 years, son of Danapal, 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 ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Principal Secretary to the Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector and District Magistrate,
O/o. The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
3. The Superintendent,
Central Prison,
Tiruchirappalli.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

H.C.P. (MD) No. 900 of 2019
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