



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2020

CORAM:

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

AND

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

H.C.P. (MD)No.970 of 2019

Gomathi, W/o.Vadivel

... Petitioner

Vs.

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

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

3.The Superintendent of Prison,
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 records pertaining to the impugned detention order passed by the second respondent made in his proceedings in Cr.M.P.No.43/2019, dated 02.08.2019, in detaining the detenu under Section 2(gg) of the Tamil Nadu Act 14 of 1982 as a SAND OFFENDER, quash the same and direct the respondents to produce the detenu, namely, Vijayakumar, S/o.Nagarajan, Male, aged about 41 years, who is detained in Central Prison, Tiruchirappalli, before this Court and set him at liberty.

For Petitioner : Mr.K.M.Karunakaran

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

ORDER

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

Gomathi, sister of the detenu namely, Vijayakumar, S/o.Nagarajan, aged about 41 years, has brought this petition to quash the impugned detention order dated 02.08.2019 on the sole



ground that when the detenu Vijayakumar was arrested and remanded to judicial custody on 25.07.2019 and he had not moved any bail application in the ground case before any Court of law, the second respondent has passed the impugned detention order. When the second respondent was well aware of the fact that the detenu has not moved any bail application so far, the question of entertaining any apprehension or inferring that there is a real possibility of the detenu coming out on bail in the above case is far from acceptance.

2.Learned counsel appearing for the petitioner would submit that though no bail application has been moved on behalf of the detenu in the ground case, 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.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.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.43/2019, dated 02.08.2019, passed by the second respondent, is set aside. The detenu, namely, Vijayakumar, son of Nagarajan, aged about 41 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 ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Additional Chief Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai - 600 009.
2. The District Collector & District Magistrate,
Tiruchirappalli District,
Tiruchirappalli.
3. The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
4. The Joint Secretary to Government,
Public (Law & Order) Department,
Fort Saint. George, Chennai - 09.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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10.02.2020

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