



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1037 of 2019

Rajesh @ Rajeshwaran

... Petitioner

-vs-

1.State of Tamil Nadu rep. by

The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

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

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus calling for the entire records connected with the detention order passed in H.S(M) Confdl.No.47/2019 dated 20.09.2019 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, Rajesh @ Rajeshwaran aged about 29 years son of Jeyaraman now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The detenu Rajesh @ Rajeshwaran aged about 29 years son of Jeyaraman himself has filed the Habeas Corpus Petition challenging the detention order in H.S(M) Confdl.No.47/2019 passed by the second respondent dated 20.09.2019, wherein he has been branded as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

2. The learned counsel for the petitioner would argue that the ground case has been registered against 21 accused, but the detention orders have been clamped on 5 accused and when the



detenu has not moved any bail application, the detaining authority to arrive at subjective satisfaction, has stated that he has aware that the detenu has tried to file bail petition before the appropriate Court in the ground case and there is real possibility of his coming out on bail. It is the submission of the learned counsel for the petitioner that when no bail petition was filed, the subjective satisfaction reached by the detaining authority is non-application of mind. It is also contended that similar case relied on by the detaining authority is not similar to the case of the detenu.

3. Per contra, the learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, would contend that the Detaining Authority has arrived at the subjective satisfaction based on the cogent and relevant materials placed by the Sponsoring Authority and there is no infirmity or irregularity in the impugned order of detention passed by the second respondent and hence, prayed for dismissal of the habeas corpus petition.

4. We have heard the rival submissions and perused the materials available on records.

5. In the matter on hand, admittedly, no bail petition has been filed in the ground case by the detenu, however, the Detaining Authority, referring the order granted to one Esakkimuthu in Crime No.102 of 2015 on the file of the Srivaikundam Police Station, came to the conclusion that there is a real possibility of the detenu coming out on bail.

6. Perusal of the bail order granted to Esakkimuthu in Crl.O.P (MD) No.8465 of 2016 would reveal that in that case, it was represented by the petitioner as well as the learned Additional Public Prosecutor that investigation was completed and charge sheet was filed and the case was pending before the Sessions Court for trial in S.C.No.50 of 2016. But in this case, the investigation is pending. It is also seen that in that case, the accused Esakkimuthu was originally granted bail, but he failed to comply with the condition and therefore, non-bailable warrant was issued. Hence, as rightly pointed out by the learned counsel for the petitioner the similar case referred by the detaining authority is not similar to the case of the detenu.

7. The Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244** has held as follows:

"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 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. All that has been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order.

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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. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.

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36. It has been held that the history of liberty is the history of procedural safeguards. (See Kameleshkumar Ishwardas Patel v. Union of India [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] vide para 49.) These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities of the detenu. As observed in Rattan Singh v. State of Punjab [(1981) 4 SCC 481 : 1981 SCC (Cri) 853]: (SCC p.483, para 4)



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"4. ... May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus."

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39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in *Thomas Pelham Dale* case : [(1881) 6 QBD 376 (CA)] (QBD p.461)

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue."

8. As rightly pointed out by the learned counsel for the petitioner, there is no material available on record to establish that there is likelihood of the detenu coming out on bail. So, in our opinion, the subjective satisfaction arrived at by the Detaining Authority is without any material and it shows non-application of mind on the part of the Detaining Authority and the decision referred supra would squarely apply to the case on hand. Hence, in our considered view, the detention order is liable to be set aside by following the decision of the Honourable Apex Court referred supra.

9. In that view, the order of detention passed by the second respondent, in H.S(M) Confdl.No.47/2019 dated 20.09.2019, is set aside and the habeas corpus petition is allowed. Consequently, the detenu, namely, Rajesh @ Rajeshwaran, aged about 29 years, S/o Jeyaraman, who is now detained at Central Prison, Palayamkottai is



directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

skn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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

H.C.P. (MD) No.1037 of 2019

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