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H.C.P.(MD) No.1092 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1092 of 2019

Mariyammal ... Petitioner/Mother of Detenu
-vs-

1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-600 009

2.The District Collector and the District Magistrate
Tirunelveli District
Tirunelveli-9

3.The Superintendent of Prison
Palayamkottai Central Prison
Tirunelveli 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 connected with the detention order of the respondent No.2 in M.H.S.Confdl.No.79/2019, dated 11.10.2019 and quash the same and direct the respondents to produce the detenu by name Siva alias Kurali Siva, son of Mariappan, aged about 28 years, now detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Vinoth Bharathi

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

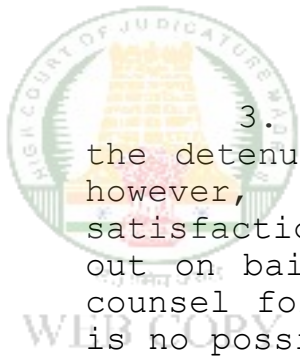
O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

Heard Mr.R.Vinoth Bharathi, learned counsel for the petitioner and Mr.V.Neelakandan, learned Additional Public Prosecutor for the respondents and perused the materials available on record.

2. Challenging the order of detention in M.H.S.Confdl.No.79/2019, dated 11.10.2019, passed by the second respondent, branding the detenu, namely, Siva alias Kurali Siva, son of Mariappan, aged about 28 years, as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, his wife has filed

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



3. The learned counsel for the petitioner would state that the detenu has not moved any bail application in the ground case, however, the Detaining Authority has reached the subjective satisfaction that there is a real possibility of the detenu coming out on bail by filing bail application. According to the learned counsel for the petitioner, when there is no bail petition, there is no possibility of the detenu coming out on bail, which shows non-application of mind on the part of the Detaining Authority.

4. Per contra, the learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, submitted that the Detaining Authority has arrived at the subjective satisfaction based on the 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.

5. In the instant case, admittedly, no bail petition has been filed in the ground case by the detenu, however, the Detaining Authority, relying upon the order passed in Cr.M.P.No.1805 of 2018, dated 09.04.2018, wherein bail was granted to one Manikandan alias Mani, arrived at the subjective satisfaction that the detenu is likely to be granted bail in the ground case and he would indulge in the acts, which are prejudicial to the maintenance of the public order.

6. 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



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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.

...
...

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)

"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."

...
...

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*



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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."

7. In the matter on hand, as rightly pointed out by the learned counsel for the petitioner, when no bail petition is filed in the ground case, there is no likelihood of the detenu coming out on bail. Moreover, the similar case referred by the Detaining Authority is not related to the co-accused and it was in respect of some other accused in some other case. 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.

8. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in M.H.S.Confdl.No.79/2019, dated 11.10.2019, is set aside. Consequently, the detenu, namely, Siva alias Kurali Siva, son of Mariappan, aged about 28 years, who is now detained at Palayamkottai Central Prison, is directed to be released forthwith unless his presence or custody or detention is required in connection with any other case.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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.

krk / skn

To:

1.The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
State of Tamilnadu,
Fort St.George, Chennai-600 009.

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



2.The District Collector and the District Magistrate,
Tirunelveli District,
Tirunelveli-9.

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

4.The Joint Secretary to Government,
Public(Law and Order),
Fort St.George, Chennai - 600 009.

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

H.C.P. (MD) No.1092 of 2019
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KK(30.07.2020) 5P 6C