



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2020

CORAM:

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

AND

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

H.C.P. (MD)No.1127 of 2019

M.Rathiga ... Petitioner / Mother of the detenu
Vs.

1.State Rep. by,
The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli - 9.

2.The Additional Chief Secretary to Government,
Home, Prohibition and Excise (XIV) Department,
Secretariat,
Chennai - 9.

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, calling for the records from the first respondent in M.H.S.Confdl.No.77/2019, dated 05.10.2019, by setting aside the said order of detention passed by the first respondent and setting the detenu Vijayapandian, aged 33 years, S/o.Muthupandian, now detained in the Central Prison, Palayamkottai, at liberty.

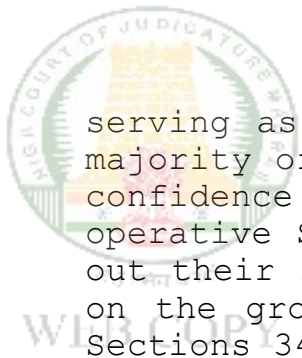
For Petitioner : Mr.V.Kathirvelu
Senior Counsel for Mr.K.Prabhu
For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

ORDER

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

Challenging the legality of the impugned order of detention dated 05.10.2019, passed by the first respondent, branding the detenu viz., Vijayapandian as 'Goonda' in M.H.S.Confdl No.77/2019, the petitioner, mother of the detenu, has filed the present Habeas Corpus Petition.

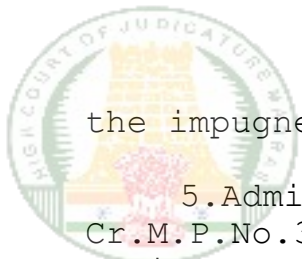
2.Mr.V.Kathirvelu, learned Senior Counsel pleading for the detenu argued that the basis and foundation for passing the impugned detention order is wholly untenable and legally not sustainable for the sole reason that the detenu hails from respectable family and



serving as an elected President of the Co-operative Society. When majority of the people in his Village has elected him reposing full confidence on him that he would be able to manage and run the Co-operative Society properly, which is meant for the Villagers to eke out their livelihood, passing the impugned order of detention based on the ground case in Crime No.310 of 2019 for the offence under Sections 341, 294(b), 302 and 506 (ii) IPC and also the adverse case registered in Crime No.64 of 2019 for the offences under Sections 147, 148, 341, 109 and 506(ii) IPC and Section 3 of TNPPDL Act, 1992, is not warranted, because he has been serving at the relevant point of time as President of the Co-operative Society. In view of passing of the impugned detention order suddenly, the entire Co-operative Society has been put to grave problem and huge borrowal given to the Members could not be realized. Coming to the defects said to have been committed by the first respondent while passing the impugned detention order, the learned Senior Counsel further canvassed before us that when the detenu surrendered before the learned Judicial Magistrate, Peraiyoor, on 03.09.2019 he was arrested and remanded to judicial custody upto 06.09.2019 and subsequently, he moved bail application and the same was also pending for consideration, whereas the first respondent, who has passed the impugned detention order, has not been properly guided by the sponsoring authority informing him about the pendency of the bail application. On the other hand, he has wrongly misrepresented that there was no bail application filed. Therefore, the detention order proceeding on the basis that no bail application was pending on the date of passing the same, clearly reflects the non-application of mind and want of subjective satisfaction, which would certainly vitiate the legality of passing the impugned order of detention. On this score, the impugned detention order is liable to be quashed.

3.Proceeding further, the learned Senior Counsel appearing for the petitioner also submitted that the first respondent has committed yet another fatal error and while comparing the case of the detenu, has wrongly referred to an unconnected case as a similar case. Inasmuch as when the detenu was arrested and remanded to judicial custody on 03.09.2019 and detention order was passed on 05.10.2019, there was only a gap of 32 days. Therefore, the case of the petitioner cannot be compared with the case of one Muthupandi, who was granted statutory bail under Section 167(2) Cr.P.C.

4.Learned Additional Public Prosecutor appearing for the respondents opposing the above arguments, although pleaded that the arguments advanced by the petitioner's side stating that there was want of subjective satisfaction, the surrender application was not given along with a copy of the remand order, for the reason that he has already surrendered and remanded to judicial custody. The learned Additional Public Prosecutor was unable to counter the second contention regarding the case of similarity while passing of



the impugned detention order.

5. Admittedly, when bail was granted to one Muthupandi in Cr.M.P.No.328 of 2019 on 23.01.2019, by the learned Judicial Magistrate, Sankarankovil, in the case on hand, the detenu surrendered only on 03.09.2109 and remanded to judicial custody, therefore, passing the impugned order of detention, dated 05.10.2019, cannot be based on the statutory bail order issued under Section 167(2) Cr.P.C., by the learned Judicial Magistrate, Sankarankovil, which clearly reflects the non-application of mind and want of subjective satisfaction while passing the impugned detention order. On this score, the impugned order of detention is liable to be quashed.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in M.H.S.Confdl.No.77/2019, dated 05.10.2019, passed by the first respondent, is set aside. The detenu, namely, Vijayapandian, aged about 33 years, son of Muthupandian, 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/proceedings.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

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

+1 CC to M/s.K.PRABHU, Advocate (SR-5917[F] dated 12/02/2020)

H.C.P. (MD)No.1127 of 2019

12.02.2020

SMA/12/03/2020/3P/7C