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H.C.P.(MD) No.1149 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1149 of 2019

Velmurugan

... Petitioner

-vs-

1.The Additional Chief Secretary to Government

State of Tamil Nadu

Home, Prohibition and Excise Department

Fort St.George, Chennai-600 009

2.The District Collector and District Magistrate

Office of the District Collector and District Magistrate

Tirunelveli District, Tirunelveli

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.81/2019, dated 11.10.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Velmurugan, son of Paramasivam, aged about 32 years, now detained as "Goonda" at Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.R.Anandharaj

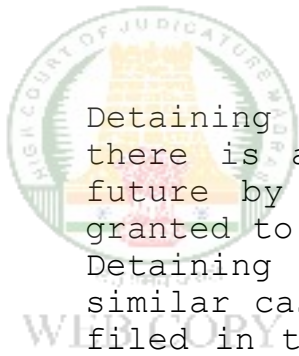
Additional Public Prosecutor

O R D E R

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

Assailing the order of detention in M.H.S.Confdl.No.81 of 2019, dated 11.10.2019, passed by the second respondent, branding the detenu, namely, Velmurugan, son of Paramasivam, aged about 32 years, as "Goonda" as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982, the detenu himself has filed this habeas corpus petition.

2. It is the submission of Mr.R.Alagumani, learned counsel for the petitioner that the detention order is liable to be quashed on two grounds. Firstly, the co-accused in the ground case as well as the adverse cases were not enlarged on bail. However, the



Detaining Authority, to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in future by filing bail application, has relied on the bail order granted to the some other accused in some other case. Secondly, the Detaining Authority has enclosed the bail orders granted in the similar cases at Page Nos.201 and 247. However, the bail petitions filed in those cases were not furnished to the detenu and thereby, he was deprived of making effective representation to the Authority concerned. In this regard, the learned counsel for the petitioner has relied on the decisions of the Honourable Apex Court in ***Rekha vs. State of Tamil Nadu***, reported in **2011 (5) SCC 244** and ***M.Ahamed Kutty vs. Union of India and another***, reported in **1990-2-SCC-1**.

3. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, would submit that the detention order has been passed after scrutinizing the entire materials produced by the Sponsoring Authority and the Detaining Authority has rightly come to the conclusion that the detenu has acted prejudicial to the interest of the public order and hence, the habeas corpus petition is liable to be dismissed.

4. We have heard the submissions of the learned counsel on either side and perused the materials available on record.

5. In the case on hand, the detention order came to be passed against the detenu on the ground that he is involved in two adverse cases and one ground case. In Paragraph No.6 of the detention order, it is stated that in the first adverse case, the detenu was granted bail by the learned Sessions Judge, Tirunelveli, in Cr.M.P.No.1849 of 2018 on 09.04.2018 and in respect of the second adverse case, the bail petition filed by the detenu in Cr.M.P.No.14441 of 2019 was dismissed by the learned Judicial Magistrate No.V, Tirunelveli (FAC) on 30.09.2019 and in respect of the ground case, the detenu filed bail petition in Cr.M.P.No.14505 of 2019 and the same was dismissed by the learned Judicial Magistrate No.V, Tirunelveli (FAC), on 30.09.2019. It is further stated that the Detaining Authority was aware that there is a real possibility of the detenu coming out on bail in future by filing bail application for the above case and to arrive at such a subjective satisfaction, he relied on the bail order granted in similar case in Cr.M.P.No.120 of 2018, on 10.01.2018, by the learned Judicial Magistrate No.III, Tirunelveli. A perusal of the records would show that in respect of the second adverse case, the detenu was charged for the offences under Sections 147, 148, 294(b), 427 and 506(ii) I.P.C. But, in the similar case relied on by the Detaining Authority for the second adverse case, the offences were only under Sections 294(b) and 506(ii) I.P.C. and it is also not stated whether the accused in that case was having previous case.



6. We are of the view that the decision cited by the learned counsel for the petitioner in the case of **Rekha** (supra) would squarely apply to the case on hand, wherein the Honourable Apex Court 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)

"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."

7. Furthermore, admittedly, in the case on hand, the bail petitions filed in similar cases were not furnished in the booklet supplied to the detenu. The Honourable Apex Court in the case of **Ahamed Kutty** (supra) has categorically held that bail petitions and the bail orders in similar cases relied on by the Detaining Authority in the detention order are the vital documents and non-furnishing of those documents would certainly deprive the detenu from making effective representation to the Authority concerned.

8. Hence, in the light of the above decisions of the Honourable Supreme Court, we are of the view that the impugned order of detention of the second respondent is liable to be quashed on both the grounds stated supra.



9. In fine, the Habeas Corpus Petition is allowed. The order of detention passed by the second respondent, in M.H.S.Confdl.No.81/2019, dated 11.10.2019, is set aside. Consequently, the detenu, namely, Velmurugan, son of Paramasivam, aged about 32 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 / proceedings.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note :

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krk / skn

To:

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

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