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H.C.P.(MD) No.1369 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1369 of 2019

Maheswaran

... Petitioner/Detenu

-vs-

1.The Principal 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 Collector and District Magistrate
Theni District, Theni

3.The Superintendent of Prison
Madurai Central Prison
Madurai 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 Detention Order No.27/2019, dated 18.12.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Maheswaran, son of Kubendran, aged about 27 years, now confining as "Goonda" at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

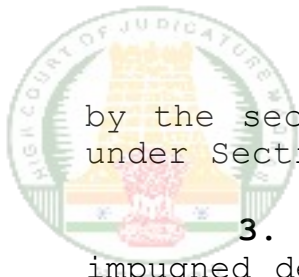
O R D E R

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

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

2. This habeas corpus petition has been filed by the detenu, namely, Maheswaran, son of Kubendran, aged about 27 years, challenging the detention order No.27/2019, dated 18.12.2019, passed

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



by the second respondent, branding him as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

3. Learned counsel for the petitioner would submit that the impugned detention order is liable to be set aside on the ground of non-application of mind on the part of the Detaining Authority. The detenu was arrested in the ground case and he was in judicial custody and he did not move any bail application. But, the Detaining Authority, without any materials, came to the conclusion that the detenu is likely to be released on bail and if he comes out on bail, he will indulge in similar activities. In this regard, the learned counsel has placed reliance upon the decision of the Honourable Apex Court in the case of **Rekha vs. State of Tamil Nadu**, reported in **2011 (5) SCC 244**.

4. The learned Additional Public Prosecutor submitted that based on the cogent materials furnished by the Sponsoring Authority, the detention order came to be passed by the second respondent and there is no illegality or irregularity in the detention order warranting interference of this Court and prayed for dismissal of the habeas corpus petition.

5. In the matter on hand, at Paragraph No.5 of the detention order, it is stated that the detenu was arrested in the ground case and remanded to judicial custody upto 20.12.2019. But, the Detaining Authority, to arrive at the subjective satisfaction, has stated that they received a secret information that the detenu or his relatives may file bail petition before the competent Court very soon and generally, bails are granted by the competent Courts after a lapse of time. That apart, no similar case particulars have been referred by the second respondent in the impugned order. Perusal of the records shows that without any *iota* of material, this subjective satisfaction has been arrived at by the Detaining Authority to clamp the impugned order of detention.

6. The Honourable Apex Court in the case of **Rekha** (cited supra) 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 bail orders 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. In the light of the above facts, the order of detention No.27/2019, dated 18.12.2019, passed by the second respondent, is set aside. Consequently, the detenu, namely, Maheswaran, son of Kubendran, aged about 27 years, who is now detained at Madurai 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)

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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.

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To:

- 1.The Principal 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 Collector and District Magistrate,
Theni District, Theni.
- 3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 4.The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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