



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

H.C.P. (MD) No.575 of 2020

K.Vahitha

...Petitioner/Mother of detenu

-vs-

1.State of Tamilnadu,

Rep. by the Secretary to Government,
Home, Prohibition and Excise Department
Fort St.George, Chennai-600 009.

2.The District Collector and District Magistrate
Kanniyakumari District,
Nagercoil.

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

... 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 passed in P.D.No.15/2020, dated 19.06.2020 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely, the petitioner's son i.e., Irfan Ali @ Irfan, aged about 24 years, S/o.Kabur, now detained at the Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Pragalathan

For Respondents : Mr.K.Dinesh Babu

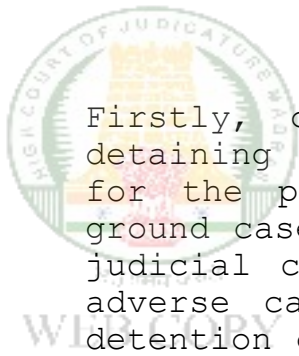
Additional Public Prosecutor

O R D E R

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

This habeas corpus petition has been filed to quash the detention order passed by the second respondent in P.D.No.15/2020, dated 19.06.2020, wherein, the detenu, Irfan Ali @ Irfan, Son of Kabur, aged about 24 years, has been branded as "Goonda" as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982.

2. Mr.N.Pragalathan, learned counsel appearing for the petitioner would argue that the detention order impugned in this habeas corpus petition is liable to be quashed on two grounds.



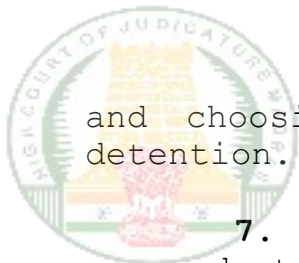
Firstly, on the ground of arbitrary exercise of power by the detaining authority. It is the submission of the learned counsel for the petitioner that there are totally three accused in the ground case. A1 and A3 have been secured and they were remanded to judicial custody. The detenu, who is arrayed as A1, is having 6 adverse cases and A3 has involved in 9 previous cases, but the detention order has been passed only against A1, the detenu in this case, while A3 has been arrested and released on bail. Secondly, the similar case referred by the detaining authority to arrive at a subjective satisfaction is not similar to the case of the detenu. In the similar case, one Jeyaprakash was arrested in Cr.No.206 of 2019 on the file of the Sub-Inspector of Police, Eraniel Police Station. While granting bail to him, the learned Judicial Magistrate, Eraniel taking into consideration the other two accused were already granted bail, but in the present case, arrested accused A1 & A3 were in the judicial custody and A-2 was at large on the date of passing of the detention order.

3. Per contra, Mr.K.Dinesh Babu, learned Additional Public Prosecutor, while reiterating the counter affidavit filed by the second respondent, would argue that the second respondent has rightly passed the detention order taking into consideration of the antecedents of the detenu and only to prevent the detenu from indulging in similar activities in future. It is further added that subjective satisfaction has been reached based on the materials placed by the sponsoring authority and there is no illegality or irregularity in the order of detention passed by the second respondent. Hence, he 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, it is not in dispute that in the ground case in Cr.No.708 of 2020 on the file of the Kottar Police Station, there are totally three accused. It is not disputed that on the date of passing the detention order A1 & A3 were secured and they were remanded to judicial custody and their bail application came to be dismissed by the Principal Sessions Court, Kanniyakumari District at Nagercoil in CrI.M.P.No.1907 of 2020, dated 04.06.2020. While dismissing the bail petition, the learned Judge has noted that the detenu is having 12 adverse cases and A3 was having 9 previous cases. It is equally not disputed that no detention order has been passed against A3. He was released on bail subsequently. It shows the arbitrary exercise of power by the detaining authority.

6. In this regard, in **2010 (1) MWN (Cr.) 129 (Chandra v. The Secretary to Government)** and the order passed by this Court in H.C.P.(MD).No.613 of 2019, dated 02.01.2020, it has been held that the Authorities cannot exercise their power arbitrarily for picking



and choosing only some of the accused to clamp the order of detention.

7. In this case also, no explanation has been given by the respondents for passing detention order only against the detentive / A1.

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8. As rightly pointed out by the learned counsel appearing for the petitioner that while arriving at the subjective satisfaction, the detaining authority has referred the bail granted to one Jeyaprakash, who is an accused in Cr.No.206 of 2019 on the file of the Eraniel Police Station. The learned District Munsif-cum-Judicial Magistrate, Eraniel granted bail to him in CrI.M.P.No.3468 of 2019 considering the fact that A2 and A3 were already granted bail. But in the matter on hand, it is not in dispute both arrested accused A1 & A3 were in judicial custody at that relevant time. A2 was not secured on the date of passing of the detention order. So, the similar case relied on by the detaining authority is not similar to the case of the detentive, which shows lack of non application of mind on the part of the detaining authority. So, we are of the opinion that the order impugned in this habeas corpus petition is liable to be set aside.

9. In fine, the Habeas Corpus Petition is allowed. The detention order in P.D.No.15/2020, dated 19.06.2020, passed by the second respondent, is set aside. Consequently, the detentive, namely, Irfan Ali @ Irfan, son of Kabur, aged about 24 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 ()

// True Copy //

/ /2021

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

H.C.P. (MD) No.575 of 2020
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TP (CO)
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