



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2011

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

HABEAS CORPUS PETITION(MD).No.719 of 2011

S.Poongodi

: Petitioner

Vs.

1.The District Magistrate and District Collector,
Tirunelveli District.

2.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

3.The Chairman,
Advisory Board,
Singaravelar Maligai,
Ground Floor (Backside Entrance),
Chennai Collectorate,
No.32, Rajaji Salai, Chennai 1.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the records relating to the Detention Order vide M.H.S.No.37 of 2011, dated 16.07.2011, on the file of the first respondent and quash the same and direct the respondents to produce the body of the petitioner's husband Seeni @ Seenivasan aged 37 years now confined at Palayamkottai Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.A.Ramar

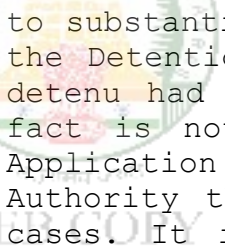
Additional Public Prosecutor

O R D E R

[Order of the Court was made by S.NAGAMUTHU, J]

The petitioner is the wife of one Seeni @ Seenivasan, who has been detained under Section 3(1) of the Tamil Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short "Tamil Nadu Act 14/1982), on the orders of the first respondent, by his proceedings in M.H.S.No.37 of 2011, dated 16.07.2011. Now, he has been lodged at Central Prison, Palayamkottai, Tirunelveli District.

2. Though several grounds have been raised in this Habeas Corpus Petition, the learned counsel for the petitioner would mainly contend that the impugned Order of Detention lacks application of mind on the part of the Detaining Authority, and therefore, according to the learned counsel, the impugned Detention Order is liable to be quashed. In order



to substantiate his contention, the learned counsel would take us through the Detention Order, wherein the Detaining Authority has stated that the detenu had not moved any Bail Application in the Ground Case. The said fact is not disputed. It is not as though there was any other Bail Application filed by the petitioner. It is not the case of the Detaining Authority that the detenu had earlier been released on bail in similar cases. It is not also the finding of the Detaining Authority that in similar cases, the accused, who were similarly placed like that of the detenu, had been released on bail. It is not also the case of the Detaining Authority that in the very same Ground Case, any other accused was granted bail. The impugned Detention Order is silent as to whether there was an imminent possibility of the detenu being released on bail. In those circumstances, the learned counsel would submit that in the absence of any satisfaction on the part of the Detaining Authority that there was a real possibility of the detenu being released on bail, the Detention Order cannot be sustained.

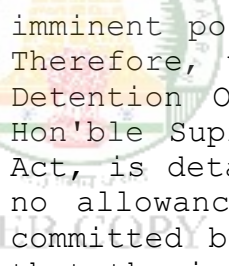
3. The learned Additional Public Prosecutor is not in a position to dispute the above factual aspects. However, he would submit that it is the common knowledge that in similar cases, the accused are granted bail by the Courts. Therefore, according to him, there was an imminent possibility of the detenu being released on bail.

4. We have considered the above rival submissions. The law, on this aspect, is no more res integra. On several occasions, the question as to whether it is necessary for the Detaining Authority to record his satisfaction that there was an imminent possibility of the detenu being released on bail came up for consideration. More precisely, the said question was considered by a Division Bench of this Court in *Irusammal Vs. State of Tamilnadu*, reported in [(2008) 3 MLJ (Cr1.) 1533]. In Paragraph Nos.3 and 5, the Division Bench has held as follows:-

"3. Heard the learned Additional Public Prosecutor. We have gone through the counter and the relevant records. The reason that weighed in the minds of the Division Bench in the earlier cases are fully applicable to the present case. The detaining authority has no reason to observe that a bail application was likely to be filed before the same or higher Court when the bail application filed by the detenu was since pending and therefore, this clearly speaks of non-application of mind.

5. The reason for detaining a person in these Acts is inter alia to safeguard the security of the State or maintain public order. This alone justifies executive detention without trial. When persons are detained on this ground the orders should be passed with extreme care and vigilance. But if orders are passed which beg to be quashed, then we may conclude that the authority is casual or careless. If so, even one hour of such detention is neither morally acceptable nor legally sustainable and may even justify the award of compensation. But routinely matters come up before us containing the same errors or defects."

5. Applying the above principles stated in the said Judgment to the facts of the present case, if we analyze, in the instant case also, the Detaining Authority has not recorded his satisfaction that there was



imminent possibility of the detenu being released on bail by the Court. Therefore, we hold that the Detaining Authority has passed the impugned Detention Order without application of mind. As has been held by the Hon'ble Supreme Court as well as this Court, since a detenu, under this Act, is detained without trial, the law is to be strictly interpreted and no allowance could be given to the Detaining Authority for the lapses committed by him. For all these reasons, we are of the considered view that the impugned Detention Order cannot be sustained, and therefore, the impugned Detention Order is liable to be quashed.

6. In the result, this Habeas Corpus Petition is allowed and the impugned Detention Order passed by the first respondent, in his proceedings in M.H.S.No.37 of 2011, dated 16.07.2011, is quashed. The detenu, by name, Seenii @ Seenivasan, is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-
Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar(CS)

To

1.The District Magistrate and District Collector,
Tirunelveli District.

2.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

3.The Chairman,
Advisory Board,
Singaravelar Maligai,
Ground Floor (Backside Entrance),
Chennai Collectorate, No.32, Rajaji Salai, Chennai 1.

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

5. The Superintendent, Central Prison, Palayamkottai

+1cc to Mr.T.Lajapathiroy Advocate, Sr.No.42178

NB

GH : 19.12.2011 : 3p/7c

ORDER MADE IN
HABEAS CORPUS PETITION (MD) .No.719 of 2011
30.11.2011