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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2013

CORAM

THE HONOURABLE MR.JUSTICE S.RAJESWARAN

and

THE HONOURABLE MR.JUSTICE.T.MATHIVANAN

H.C.P. (MD) No. 567 of 2013

Ganapathy .. Petitioner

vs

1. Government of Tamil Nadu,
rep. by its Secretary, Home, Prohibition,
and Excise (XVI) Department,
Fort St.Geroge,
Chennai-600 009.

2. The District Magistrate and District Collector,
Pudukkotai District,
Pudukkotai. .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records in P.D.No.14/2013 dated 17/05/2013 on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu Ganapthy, son of Gengaiyan Periyasamy, aged about 34 years, now confined in Central Prison, Trichy, before this Court and set him at liberty.

For petitioner : Mr.B.Nambiselvan

For respondents : Mr.A.Ramar, APP

O R D E R

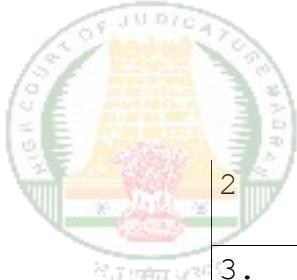
(Order of the Court was made by S.RAJESWARAN, J.)

Challenge is made to the order of detention passed by the second respondent vide Proceedings in P.D.No.14/2013 dated 17/05/2013, whereby, the petitioner was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. As per the grounds of detention dated 17.05.2013, passed by the second respondent, the detenu came to adverse notice in the following cases:

(i) Adverse Cases:

Sl No	Name of the Police station and Crime No.	Sections of law
1	Kosampatti P.S. Crime No.181/2004	341, 294(b), 323, 506(i) IPC.



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2	Thirmayan P.S. Crime No.126/2011	294(b), 323, 506(i) IPC.
3.	K.Pudupati P.S. Crime No.102/2012	341, 324, 506(ii) IPC

(ii) Ground Case:

S1 No.	Name of the Police station and Crime No.	Section of law
1	K.Pudupatti P.S. Crime No.27/2013	302 IPC

3. Though many grounds have been raised in the petition, Mr.B.Nambiselvan, learned counsel appearing for the petitioner has restricted his contention only in respect of non-application of mind on the part of the detaining authority in arriving at the subjective satisfaction before passing the order of detention. He submitted that insofar as the ground case is concerned, i.e.Crime No.27/2013, registered under Section 302 IPC, no bail application has been filed. Moreover, no similar case particulars have also been furnished by the detaining authority. But, still, the detaining authority would arrive at the subjective satisfaction and state that there is a real possibility of the detenu coming out on bail. Therefore, admittedly, no bail application is pending at the time of passing the detention order in the ground case. In the absence of material particulars, the subjective satisfaction is merely a ruse for issuance of the impugned order of detention. In support of his contention, he relies on the judgment of the Hon'ble Apex Court reported in 2012 (7) Supreme Court Cases 181 (Huidrom Konungjao Singh v. State of Manipur).

4. Per contra, Mr.A.Ramar, learned Additional Public Prosecutor, while reiterating the averments made in the counter affidavit filed on behalf of the second respondent, would submit that the order of detention has been passed on cogent and sufficient materials. Further, as the antecedent of the detenu was bad, the authority was in the compelling necessity of passing the order of detention. Therefore, according to him, the impugned order of detention does not suffer from any infirmity nor illegality warranting interference by this Court.

5. We have considered the rival submissions carefully with regard to facts and citation and perused the materials available on record.

6. To appreciate the contentions put forth by the learned counsel for the petitioner, it is useful to refer to the particular portion of the impugned order, on which heavy reliance is placed on by the learned counsel appearing for the petitioner.

“4) I am aware that Thiru.Ganapathy, who is in remand in K.Pudupatti Police Station Crime No.27/2013 of IPC, has not <https://hcservices.tnjudiciary.gov.in/hcservices> application. There is a real possibility of his (Ganapathy) coming out on bail, by filing a bail application for the above for the above case before the appropriate Court. If he

comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order. Further, resource to the normal criminal law will not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order...."

7. From the above, it is clear that when no bail application was filed by the detenu, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail would be a mere ipse dixit and that would vitiate the order of detention. It is a trite law that personal liberty of a person is too precious to be interfered with in the manner in which it had been done. Further, it would show that the order of detention has been passed on a mere supposition that the detenu is likely to be released on bail. In fact, no bail application has been filed nor any indication that he intends to do so. Supposition can never take the place of facts which are necessary to establish a case which warranted detention of a person without a trial. This is clearly an indication of non-application of mind and it is only an expression of the impression made by the authority without any material whatsoever. Therefore, on the ground of non-application of mind on the part of the detaining authority, the impugned order of detention suffers from infirmity warranting interference by this Court. In the judgment of the Hon'ble Apex Court relied on by the learned counsel for the petitioner reported in 2012 (7) Supreme Court Cases 181 (cited supra), the Hon'ble Apex Court has held as follows:

"12. In *Rekha v. State of T.N.* ((2011) 5 SCC 244) this Court while dealing with the issue held:

'... 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.'

(emphasis added)"

Thus, it is evident from the aforesaid judgment that it is not the similar case i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

...

15. In the instant case, admittedly, the said bail

<https://hcserVICES.cOURTS.GOV.IN/HCSErVICES/>

orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely because somebody else in



similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement on the grounds of detention and cannot be sustained in the eye of law."

8. In the light of the above facts and law, we have no hesitation in quashing the order of detention.

9. In the result, the detention order in P.D.No.14/2013 dated 17/05/2013 passed by the second respondent is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Deputy Registrar

/True Copy/

Assistant Registrar

To

1. THE SECRETARY, HOME, PROHIBITION,
GOVERNMENT OF TAMIL NADU,
AND EXCISE (XVI) DEPARTMENT,
FORT ST.GEROGE,
CHENNAI-600 009.
2. THE DISTRICT MAGISTRATE AND DISTRICT COLLECTOR,
PUDUKKOTAI DISTRICT,
PUDUKKOTAI.
3. THE SUPERINTENDENT, CENTRAL PRISON, TIRUCHIRAPALLI
4. THE JOINT SECRETARY TO GOVERNMENT
(PUBLIC LAW AND ORDER)
FORT ST. GEORGE, CHENNAI - 9
5. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI
6. THE DIRECTOR GENERAL OF POLICE, CHENNAI - 4

+1cc to Mr.B. NAMBI SELVAM , Advocate, SR 38693

SSM

MM/21.08.2013/4P-8C/

H.C.P. (MD) No.567 of 2013

31.07.2013