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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	K.Pudupatti P.S. Crime No.181/2004	341, 294(b), 323, 506(i) IPC.



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:

Sl 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 filed a bail 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



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

(emphasis added) "

...

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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. GEORGE,  
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