



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2013

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

HABEAS CORPUS PETITION No.97 of 2013

Petchithai @ Dhanam

.. Petitioner

vs.

1.The Secretary to Government,
Home, Prohibition and Excise
Department,
Secretariat,
Chennai.

2.The District Collector and
District Magistrate,
Thoothukudi District.

.. Respondents

Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus praying to call for the records relating to the detention order passed by the second respondent vide H.S.(M)Conf1.No.1/2013, dated 07.01.2013 and set aside the same and consequently direct the respondents to produce the detenu namely Narayanan, S/o.Madasamy Thevar, aged about 46 years before this Court, now he is detained at Palayamkottai Central Prison and set him at liberty and pass such further or other orders.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.P.Jothi,
Addl. Public Prosecutor.

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

The petitioner is the wife of the detenu and challenge is made to the order of detention passed by the second respondent, dated 07.01.2013, under which, the detenu has been branded as a "Goonda" and detained under 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 14/1982).

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

2. As per the grounds of detention passed by the second respondent dated 07.01.2013, the detenu came to adverse notice in



the case in Crime No.207 of 2012 registered by Authoor Police Station for the commission of the offences under Sections 147, 294 (b), 323, 506(ii) and 120-B of the Indian Penal Code, which took place on 27.10.2012.

3. In Paragraph No.3 of the grounds of detention, it is averred among other things that the detenu was also involved in the commission of the offences, which took place at 18.05 hours on 09.11.2012 and in this regard, the Sub Inspector of Police, Authoor Police Station has registered a case in Crime No.216 of 2012 for the commission of the offences under Sections 147, 148, 294(b), 307, 302 and 120-B I.P.C. (ground case). The detenu has surrendered before the Judicial Magistrate Court No.IV, Madurai on 15.11.2012 in connection with the ground case and was taken into police custody on 27.11.2012 and upon his confession, certain incriminating articles were seized and thereafter he was produced before the Judicial Magistrate's Court, Tiruchendur on 28.11.2012 and remanded to judicial custody till 20.12.2012 and his remand was further extended till 17.01.2013.

4. The detaining authority being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention.

5. The learned counsel for the petitioner has drawn the attention of this Court to paragraph No.4 of the grounds of detention and would submit that as per the averments made therein, the detenu is in remand in connection with the adverse case as well as ground case and he has not filed any application for bail in both the cases and however the detaining authority for arriving at a subjective satisfaction that there is a real and imminent possibility of his coming out on bail and would indulge in such further activities, which are prejudicial to the maintenance of public order, placed reliance upon the similar case registered under Sections 341, 147, 148, 302, 506(ii) and 109 I.P.C. by the Thattarmadam Police Station in Crime No.160 of 2012, wherein, the concerned accused was enlarged on bail by the Principal Sessions Judge, Thoothukudi vide order dated 21.11.2012 in Cr.M.P.No.4357 of 2012.

6. It is the submission of the learned counsel for the petitioner that though no vital and cogent materials have been placed by the sponsoring authority before the detaining authority to show that either the detenu or his relatives are taking steps to file applications for bail in both the cases, the detaining authority has arrived at such a subjective satisfaction and ~~the case for bail in the same~~ is vitiated for non-placing of vital and cogent materials by the sponsoring authority and hence prays for quashment of the order of detention.



7. The Court heard the learned Additional Public Prosecutor appearing for the respondents also.

8. A perusal of paragraph No.4 of the grounds of detention would disclose that the detenu is in remand in connection with the adverse case as well as ground case and admittedly he did not file any bail application in both the cases till the clamping of the order of detention and the sponsoring authority has failed to place vital and cogent materials to show that either the detenu or his relatives are taking steps to file applications for bail in both the cases. In the considered opinion of this Court, in the absence of such vital and cogent materials, the subjective satisfaction arrived at by the detaining authority in that regard, is vitiated and therefore on that sole ground, the order of detention is liable to be quashed.

9. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention in H.S.(M)Conf1.No.1/2013, dated 07.01.2013, passed by the second respondent is quashed. The detenu namely Narayanan, S/o.Madasamy Thevar, is directed to be set at liberty forthwith, unless his detention/remand is required in connection with any other case/proceedings.

Sd/-

Deputy Registrar(Accounts)

/True Copy/

Assistant Registrar

To

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

+One cc to M/s.K.P.Narayanakumar, Advocate, SR.No.11836

smn

RL/7c - 4/3/2013

H.C.P (MD) No.97 of 2013