
(2016) 01 MAD CK 0155
In the Madras High Court
Case No : H.C.P.(MD) No. 1549 of 2015

S. Lakshmi

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, Section 148, Section 294(b), Section 379, Section 380, Section 392, Section 457, Section 506(ii)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offen

Citation : (2016) 01 MAD CK 0155

Hon'ble Judges : P.R. Shivakumar and V.S. Ravi, JJ.

Bench : Division Bench

Advocate : M. Maran, for the Appellant; A. Ramar, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—1. The petitioner is the mother of the detenu-Maruthupandi, S/o. Sankara Narayanan, aged about 20 years. The detenu has been detained by the second respondent by his order in M.H.S. Confdl. No. 116/2015, dated 13.10.2015, holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No. 222 of 2015 on the file of Vickiramasingapuram Police Station registered for alleged offences punishable under Sections 147, 148, 294(b) and 506(ii) of the Indian Penal Code and the following four adverse cases:

"(i) Crime No. 227 of 2014 on the file of Kallidaikurichi Police Station registered for alleged offence punishable under Section 392 of the Indian Penal Code;

(ii) Crime No. 207 of 2015 on the file of Vickiramasingapuram Police Station registered for alleged offence punishable under Section 379 of the Indian Penal Code;

(iii) Crime No. 212 of 2015 on the file of Vickiramasingapuram Police Station registered for alleged offence punishable under Section 379 of the Indian Penal Code; and

(iv) Crime No. 216 of 2015 on the file of Ambasamudram Police Station registered for alleged offences punishable under Sections 457 and 380 of the Indian Penal Code.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of "Goonda" and that his presence at large would be prejudicial to the maintenance of public order and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the ground case and the adverse cases, passed the impugned detention order. The said order is challenged in the present Habeas Corpus Petition.

3. Though the detention order is sought to be assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that in the ground case, no bail application was filed and in the adverse cases, bail applications were filed and the same were dismissed, but still the detaining authority expressed subjective satisfaction that there was a real possibility of the detenu coming out on bail in the ground case and the adverse cases and the said subjective satisfaction is nothing but ipse dixit not supported by cogent materials.

4. In elaboration of the said contention, the learned counsel for the petitioner submits that the subjective satisfaction regarding the real possibility of the detenu coming out on bail in a case, wherein no bail application is pending, cannot be based on any other case in respect of other persons and that the very fact that no bail application is pending will negative the imminent possibility of the detenu coming out on bail, subject to an exception that a co-accused in the very same case placed under similar circumstances has been released on bail.

5. In support of his contention, the learned counsel for the petitioner relies on the Judgment of a Larger Bench of the Hon"ble Supreme Court consisting of three Hon"ble Judges in *Rekha Vs. State of Tamil Nadu*, reported in , (2011) 5 SCC 244, followed by and clarified in *Huidrom Konungjao Singh Vs. State of Manipur and others* reported in , (2012) 7 SCC 181, which has also been followed by this Court in an unreported decision in *H.C.P.(MD). No. 1567 of 2015 [Sri Devi Vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others]*, vide order dated 14.12.2015.

6. The submissions made by the learned Additional Public Prosecutor in reply to the above said contentions raised by the learned counsel for the petitioner are also heard.

7. In paragraph No. 6 of the grounds of detention, the Detaining Authority, expressing his subjective satisfaction regarding the possibility of the detenu coming out on bail, made the following observation:

"I am aware that Thiru. Maruthupandi filed a bail petition before the Judicial

Magistrate, Ambasamudram, in CRMP No. 6276/2015 in Kallidaikurichi Police Station Crime Number 227/2014 and the bail petition was dismissed on 05.10.2015. I am aware that he filed a bail petition before the Judicial Magistrate, Ambasamudram, in CRMP No. 6291/2015 in Vickiramasingapuram Police Station Crime Number 207/2015 and the bail petition was dismissed on 05.10.2015. I am aware that he filed a bail petition before the Judicial Magistrate, Ambasamudram, in CRMP No. 6292/2015 in Vickiramasingapuram Police Station Crime Number 212/2015 and the bail petition was dismissed on 05.10.2015. I am aware that he filed a bail petition before the Judicial Magistrate, Ambasamudram, in CRMP No. 6288/2015 in Ambasamudram Police Station Crime Number 216/2015 and the bail petition was dismissed on 05.10.2015. I am also aware that there is real possibility of his coming out on bail in future by filing bail application for the above cases since in similar cases bails are granted by the appropriate courts. I am also aware that in a similar case bail has been granted to Ansari in CRMP No. 4846/2012 dated 09.07.2012 by the Judicial Magistrate, Shenkottai. I therefore infer that there is real possibility of his (Thin. Maruthupandi) coming out on bail in Kallidaikurichi Police Station Crime Number 227/2014, Vickiramasingapuram Police Station Crime Number 207/2015, Vickiramasingapuram Police Station Crime Number 212/2015 and Ambasamudram Police Station Crime Number 216/2015; since bails are granted by the appropriate courts in such cases. I am aware that Thiru. Maruthupandi is in remand in Vickiramasingapuram Police Station Crime Number 222/2015 and in this case he has not moved any bail application so far. I am also aware that there is real possibility of his coming out on bail in future by filing bail application for the above cases since in similar cases bails are granted by the appropriate courts. I am also aware that in a similar case bail has been granted to Manokar in CRMP No. 5459/2014, dated: 29.10.2014 by the Judicial Magistrate No-V, Tirunelveli. I therefore infer that there is real possibility of his (Thiru. Maruthupandi) coming out on bail in Vickiramasingapuram Police Station Crime Number 222/2015; since bails are granted by the appropriate courts in such cases."

8. The Detaining Authority referred to the fact that no bail application was filed in the ground case in Crime No. 222 of 2015 registered on the file of Vickiramasingapuram Police Station and the bail applications filed in the four adverse cases were dismissed. However, the Detaining Authority proceeded further to express a subjective satisfaction that there was real possibility of the detenu coming out on bail by filing a bail application, since in a similar case, not being a case of a co-accused in the very same case, other persons were granted bail by the learned Judicial Magistrate, Shenkottai in CRMP. No. 4846 of 2012, on 09.07.2012 and by the learned Judicial Magistrate No. V, Tirunelveli, in CRMP. No. 5459 of 2014, on 29.10.2014. Such a comparison of bail order passed in another case, when no bail application is pending, to express subjective satisfaction of the real possibility of the detenu coming out on bail is against the dictum laid down by a Larger Bench of the Supreme Court in Rekha Vs. State of Tamil Nadu,

reported in , (2011) 5 SCC 244, followed by a Division Bench of the Hon''ble Supreme Court in Huidrom Konungjao Singh Vs. State of Manipur and others reported in , (2012) 7 SCC 181 and by this Court in an unreported decision in H.C.P. (MD). No. 1567 of 2015 [Sri Devi Vs. Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others], vide order dated 14.12.2015. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention is vitiated on the said ground alone.

9. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 13.10.2015, made in M.H.S. Confdl. No. 116/2015, by the second respondent, the District Collector/District Magistrate, Office of the District Collector and District Magistrate, Tirunelveli District, Tirunelveli-9 and directs the release of the detenu by name Maruthupandi, S/o. Sankara Narayanan, aged about 20 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.