
(2016) 01 MAD CK 0135
In the Madras High Court
Case No : H.C.P. (MD) No. 1426 of 2015

Subathara

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 302, Section 323, Section 324, Section 341, Section 379, Section 427, Section 506(ii)

Citation : (2016) 01 MAD CK 0135

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

Bench : Division Bench

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

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—1. The petitioner is the wife of the detenu, viz., Senthil alias Senthilkumar, S/o. Vaiyapuri, aged about 35 years. The detenu has been detained by the second respondent by his order in P.D. No. 44/2015, dated 14.08.2015, 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. 188 of 2015 on the file of Thirukkattuppalli Police Station registered for alleged offences punishable under Sections 147, 148, 324 and 302 of the Indian Penal Code and the adverse case in Crime No. 296 of 2012 on the file of Thirukkattuppalli Police Station registered for alleged offences punishable under Sections 147, 148, 323, 506(ii), 379 of the Indian Penal Code read with 3(1) of PPD L Act altered into 147, 148 and 427 of the Indian Penal Code.

2. The Detaining Authority, expressing subjective satisfaction that the detenu conformed to the definition of the "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, passed the impugned detention order. The said order is challenged

in the present Habeas Corpus Petition.

3. Though the order of detention is assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that the bail applications filed in the ground case were dismissed and no further bail application was filed, 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 relying on the bail order passed in another case and that the same will be termed 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 the bail applications filed by the detenu were dismissed and 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 v. State of Tamil Nadu*, reported in , (2011) 5 SCC 244, followed by and clarified in *Huidrom Konungjao Singh v. 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 v. 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. 5 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:

"Thirumathi. Subathra, Wife of the accused Thiru. Senthil alias Senthilkumar is taking action to take out her husband Thiru.Senthil alias Senthilkumar on bail by filing another bail application for the Ground case registered in Thirukkattuppalli Police Station Crime Number.188/2015, Under sections 147, 148, 324 and 302 of Indian Penal Code before the appropriate Court. Moreover, in a Similar case registered in Thanjavur Medical College Police Station Crime Number. 651/2013, Under sections 147, 148, 341, 506(ii) and 302 of Indian Penal Code read with 149 of Indian Penal Code, bail was granted to the accused Kurunthaiyan and Lakshmanan by the Honourable High Court of Madras, Madurai Bench in Crl.O.P. (MD) No. 20102/2013 Dated 12.11.2013. Hence, there is a real possibility of his (Thiru.Senthil alias Senthilkumar) coming out on bail by filing bail petition for the above said Ground case before the appropriate Court. If he comes out on bail, he

will indulge in further activities, which will be prejudicial to the maintenance of Public Order. Further, the recourse to 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".

8. The Detaining Authority referred to the fact that the bail applications filed in the ground case were dismissed by the learned Judicial Magistrate, Thiruvaiyaru, vide CR.M.P. No. 5143 of 2015, on 31.07.2015 and by the Principal District and Sessions Court, Thanjavur, vide CR.M.P. Nos. 2876, 2901 and 2918 of 2015, on 10.08.2015, 11.08.2015 and 12.08.2015 respectively and that thereafter, no bail application was filed in the ground case, namely, Crime No. 188/2015 registered on the file of Thirukkattuppalli Police Station. 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, another person was granted bail by this Court in CrI.O.P. (MD) No. 20102 of 2013, on 12.11.2013. 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 v. 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 v. 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 v. 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 14.08.2015, made in P.D. No. 44/2015, by the second respondent, the District Collector and District Magistrate, the District Collector and District Magistrate's Office, Vallam Road, Thanjavur and directs the release of the detenu by name Senthil alias Senthilkumar, S/o. Vaiyapuri, aged about 35 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.