

(2016) 01 MAD CK 0097
In the Madras High Court
Case No : H.C.P.(MD) No. 1685 of 2015

Thangaraj

APPELLANT

Vs

The Principal Secretary to Government, Home, Prohibition
and Excise (IX) Department and Others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Arms Act, 1959 — Section 25(1)(A)
Penal Code, 1860 (IPC) — Section 109, Section 120-B, Section 147, Section 148,
Section 294(b), Section 302, Section 34, Section 341, Section 392, Section 397,
Section 506(h), Section 506(ii)
Tamil Nadu

Citation : (2016) 01 MAD CK 0097

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

Bench : Division Bench

Advocate : R. Alagumani, for the Appellant; A. Ramar, Additional Public
Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—1. The petitioner is the father of the detenu, viz., I.T. @ Ram Kumar, S/o. Thangaraj, aged about 22 years. The detenu has been detained by the second respondent by his order in No. 167/BCDFGISSSV/2015 dated 27.11.2015, 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. 888 of 2015 on the file of E2 Madhichiam Police Station registered for alleged offences punishable under Sections 147, 148 and 302 of the Indian Penal Code @ 147, 148, 341, 392, 506(ii) and 302 of the Indian Penal Code r/w 34 and 397 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 application filed in the ground case was 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 as 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 application filed by the detenu was 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 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. 4 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. I.T. @ Ram Kumar s/o. Thangaraj is in remand in the ground case in E. 2 Madhichiam P.S. Cr. No. 888/2015 for the offences under section 147, 148, 302 IPC @ Sec. 147, 148, 341, 392, 506(h) & 302 IPC r/w 34 and 397 IPC at the Central Prison, Madurai; and I am also aware that his bail application filed in the above said ground case was dismissed by the J.M. No. II, Madurai in Crl.M.P. No. 5066/2015 on 07.09.2015. I am also aware that Thiru. I.T. @ Ram Kumar s/o. Thangaraj on his behalf is making efforts to file further bail application in the said ground case before the court concerned.

On consideration of the bail order granted by the J.M. No. IV, Madurai in Crl.M.P. No. 3084/2015 dated 03.09.2015 to an accused Thiru. Pandi @ Kamma Pandi s/

o. Sakkarai Thevar concerned in C2 Subramaniapuram P.S. Cr. No. 593/2015 u/s. 147, 148, 294(b), 302, 506(ii), 120-B [wrongly mentioned as "120(b)"] r/w 109 IPC & 25(1)(A) Arms Act, which is similar to the above mentioned ground case, I am of the view that there is a real possibility of his (Thiru. I.T. @ Ram Kumar s/o. Thangaraj) coming out on bail in the said ground case by filing bail application before the court concerned, since in similar case bail has been granted by the court concerned."

8. The Detaining Authority referred to the fact that the bail application filed in the ground case was dismissed by the learned Judicial Magistrate No. II, Madurai, vide Crl.M.P. No. 5066 of 2015, on 07.09.2015 and that thereafter, no bail application was filed in the ground case, namely, Crime No. 888/2015 registered on the file of E-2 Madhichiam 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 the learned Judicial Magistrate No. IV, Madurai in Crl.M.P. No. 3084 of 2015 on 03.09.2015. 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 27.11.2015, made in No. 167/BCDFGISSSV/2015, by the second respondent, the Commissioner of Police, Office of the Commissioner of Police, Madurai City, Madurai and directs the release of the detenu by name I.T. @ Ram Kumar, S/o. Thangaraj, aged about 22 years forthwith, if his continued custody is not authorised in specific cases or by any other detention order.