

(2015) 12 MAD CK 0011
In the Madras High Court
Case No : H.C.P.(MD) No. 1610 of 2015

Vijayashanthi

APPELLANT

Vs

The Principal Secretary to Government, Home, Prohibition
and Excise (IX) Department, State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 21-12-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120(b), 147, 148, 149

Citation : (2015) 12 MAD CK 0011

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 uncle's daughter of the detenu. The detenu was detained by the second respondent by his order in Cr.M.P. No. 18/2015 (GOONDA), dated 17.10.2015, 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. 408 of 2015 on the file of Virudhunagar Rural Police Station registered for alleged offence punishable under Section 392 of the Indian Penal Code and the following two adverse cases:--

"(i) Crime No. 100 of 2011 registered on the file of Thiruppuvanam Police Station, Sivagangai District for alleged offences punishable under Sections 147 , 148 , 341 , 342 , 120(b) of the Indian Penal Code r/w 149 of the Indian Penal Code; and

(ii) Crime No. 297 of 2015 registered on the file of Amathur Police Station, Virudhunagar District for alleged offences punishable under Sections 147 , 148 , 341 , 307 , 302 , 109 of the Indian Penal Code and 4 of TNPHW Act."

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 public peace and also expressing subjective satisfaction that it was very likely that the detenu would come out on bail in the second adverse case and 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 subjective satisfaction of the Detaining Authority regarding the real possibility of the detenu coming out on bail in the ground case and the second adverse case is not based on cogent materials and the same may be termed as ipse dixit.

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 negate 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 T. Nadu tr. Sec. to Govt. and Another, , followed by and clarified in Huidrom Konungjao Singh Vs. State of Manipur and Others, , which has also been followed by a Division Bench of the Madras High Court in H.C.P. No. 1154 of 2015, dated 11.08.2015 [Chandrakala v. The Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others].

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. 7 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 Muthuselvam @ Avva have been remanded to Judicial custody upto 20.10.2015 and lodged at the Borstal School, at Nanguneri, Tirunelveli District in connection with Cr. No. 297/15 of Amathur Police Station and Crime No. 408/15 of Virudhunagar Rural Police Station. The adverse case was registered against the accused in Cr. No. 297/15 u/s. 147 , 148 , 341 , 307 , 302 , 109 IPC and 4 of TNPHW Act. In this case, the accused did not file bail petition. But in a similar case in Crime No. 33/14 u/s. 147 , 148 , 341 , 323 , 307 @ 147 , 148 , 341 , 323 , 302 IPC registered against the accused Karathamalai at Kariapatty Police Station, the Madurai Bench of Madras High Court, Madurai

has granted bail to the accused vide CrI.O.P.(MD) No. 21506/14 Dated 02.12.14. And also in a similar case in crime No. 269/15 u/s. 341 , 294(b) , 323 IPC and 379 (NP) r/w 4 of TNPHW Act, registered against the accused Prabhakaran and two others at Soolakkarai Police Station, the Judicial Magistrate II, Court, Virudhunagar has granted bail to the accused vide CrMP 8052/15, Dated 29.09.15. The ground case was registered against the accused in Cr. No. 408/15 u/s. 392 IPC. In this case the accused did not file bail petition. But in a similar case in Cr. No. 236/13 u/s. 392 IPC registered against the accused Mahalingam, at Mallanginar Police Station, the Judicial Magistrate I Court, Virudhunagar has granted bail to the accused vide Cr.MP.6284/13 Dated 21.10.13 Hence, I infer, that there is a Real Possibility of his (Muthuselvam @ Avva) coming out on bail in the above adverse case and in the ground case, by filing bail petition before the concerned court or in the higher court, since bails are granted by the courts in such cases."

8. The Detaining Authority referred to the fact that no bail application was filed in the second adverse case, namely, Crime No. 297/2015 registered on the file of Amathur Police Station, Virudhunagar District, wrongly quoting it as the third adverse case in the tabular column. 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 Madurai Bench of Madras High Court. Similarly, in respect of the ground case, namely, Crime No. 408 of 2015 registered on the file of Virudhunagar Rural Police Station, the Detaining Authority made a reference to the non-filing of a bail application. However, the Detaining Authority chose to express the subjective satisfaction of the real possibility of the detenu coming out on bail in the ground case by making a reference to a bail order granted to a third person in respect of another case. Such a comparison of bail orders passed in other cases, 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 T. Nadu tr. Sec. to Govt. and Another*, followed by a Division Bench of the Hon"ble Supreme Court in *Huidrom Konungjao Singh Vs. State of Manipur and Others*, and a Division Bench of the Madras High Court in *H.C.P. No. 1154 of 2015, dated 11.08.2015 [Chandrakala v. The Secretary to Government of Tamil Nadu, Home Prohibition and Excise Department and others]*. Hence, as rightly contended by the learned counsel for the petitioner, the Order of Detention 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 17.10.2015, made in Cr.M.P. No. 18/2015 (GOONDA), by the second respondent, the District Magistrate and District Collector, Office of the District Magistrate and District Collector, Virudhunagar District, Virudhunagar and directs the release of the detenu, by name Muthuselvam @ Avva, S/o. Kuthus @ Karuppasamy, aged about 20 years

forthwith, if his continued custody is not authorised in specific cases or by any other detention order.