

M.Rajappa Alias Sultan Vs. 1.The State of Tamil Nadu Represented

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Court : Chennai

Decided On : Jan-09-2013

Judge : M.Jaichandren

Appellant : M.Rajappa Alias Sultan

Respondent : 1.The State of Tamil Nadu Represented

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

09. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN AND THE HONOURABLE MR.JUSTICE S.NAGAMUTHU HABEAS CORPUS PETITION(MD).No.1395 of 2012 M.Rajappa alias Sultan ... Petitioner Vs. 1.The State of Tamil Nadu Represented by its Secretary to Government, Home, Prohibition and Excise Department, Secretariat, Chennai-9. 2.The District Collector/District Magistrate Collectorate, Kokirarakulam, Tirunelveli District-9. 3.The Superintendent of Central Prison, Palayamkottai Central Prison, Tirunelveli District. ... Respondents Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus calling for the entire records connected with the detention order in M.H.S.Confdl No.57/2012, dated 30.06.2012 passed by the Respondent No.2, against petitioner namely M.Rajappa @ Sultan, S/o.Maideen Abdul Kadhar aged about 36 years residing at Malaiyan Street, Tenkasi, Tenkasi Taluk, Tirunelveli District, now confined at Central Prison, Palayamkottai, Tirunelveli District has been detained and branded as Goonda under the Tamil Nadu prevention of Dangerous activities of Boot-Leggings, Drug

offenders, forest offenders, Goondas Act before this Court and set him at liberty forthwith. !For Petitioner ... Mr.T.Lajapathi Roy ^For Respondents ... Mr.C.Ramesh Additional Public Prosecutor ***** :ORDER ***** [Order of the Court was made by M.JAICHANDREN, J] The petitioner is the detenu, M.Rajappa @ Sultan, S/o.Maideen Abdul Kadhar, who has been detained, under sub section (1) of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (in short 'Tamil Nadu Act 14 of 1982'), pursuant to the order passed by the second respondent, in his proceedings, in M.H.S.Confdl No.57/2012, dated 30.06.2012. In view of the detention order passed by the second respondent dated 30.06.2012 the detenu had been lodged in Central Prison, Palayamkottai. The present Habeas Corpus petition has been filed before this Court, challenging the detention order of the second respondent, dated 30.06.2012.

2. The main contention raised on behalf of the petitioner is that there was no real possibility of the detenu coming out on bail and indulging in activities prejudicial to the maintenance of public order. The learned counsel appearing on behalf of the petitioner had submitted that there were no materials available before the Detaining Authority to arrive at such a conclusion. As such, the Detaining Authority had arrived at the conclusion, without proper application of mind.

3. The learned counsel appearing on behalf of the petitioner had submitted that the Detaining Authority concerned had stated, in the grounds of detention, that there is a real possibility of the detenu coming out on bail, as an order had been passed, in a similar case, wherein bail had been granted. However, the relevant papers relating to the said case, stated to be similar in nature, had not been furnished to the detenu. Therefore, the impugned detention order passed against the detenu is arbitrary, illegal and void, as held in *Rekha Vs.State of Tamil Nadu*, (2011 (5) SCC

244) and in a recent decision, in *Huidrom Konungjao Singh Vs. State of Manipur*, reported in (2012) 3 MLJ (Cri) 794 (SC).

4. The learned counsel had pointed out that the Detaining Authority concerned had mentioned about the similar case, in paragraph 6 of the grounds of detention. The relevant paragraph of the grounds of detention reads as follows:- " I am aware that Thiru.Rajappa alias Sultan has not moved any bail application so far in Vasudevanallur Police Station Crime Number 118/2012. I am also aware that there is real possibility of his coming out on bail by filing bail application for the above case since in similar cases bails are granted by the concerned court or higher courts. I am also aware that in similar case bail has been granted in CRMP No.1136/2012 dated 01.03.2012 by the Judicial Magistrate, Cheramahadevi. I am aware that he is in remand in Vasudevanallur Police Station crime number 121/2012 and he has not moved any bail application so far in this case. I am also aware that there is real possibility of his coming out on bail by filing bail application for the above case since in similar cases bails are granted by the concerned court or higher courts. I am also aware that in similar case bail has been granted in CRMP 1034 2012, dated 02.02.2012 by the Judicial Magistrate Court, Valliyoor. If he comes out on bail, he will indulge in further activities in future, which will be prejudicial to the maintenance of the public order. Further, the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of the public order. On the materials placed before me, I am satisfied that Thiru.Rajappa alias Sultan is a "Goonda" and there is a compelling necessity to detain him in order to prevent him from indulging in acts which are prejudicial to the maintenance of public order under the provisions of the Tamilnadu Act 14 of 1982." 5. Per contra, the learned Additional Public Prosecutor, appearing on behalf of the respondents, had submitted that, in view of the fact that an order had been passed, in a similar case, granting bail, as stated by the Detaining Authority, in paragraph 6 of the grounds of detention, there is a real possibility of the detenu coming out on bail and indulging in activities prejudicial to the maintenance of public order.

6. In the present case, from the records available before this Court, it is noted that none of the relevant papers relating to the similar case, mentioned by the Detaining Authority, had been furnished to the detenu, except a copy of the bail order said to have been passed by the Court concerned. Hence, the impugned order of detention passed by the Detaining Authority is liable to be set aside.

7. In such circumstances, this Court is of the considered view that the conclusion of the Detaining Authority that there was real possibility of the detenu coming out on bail and indulging in activities prejudicial to the maintenance of public order cannot be sustained, as it is not based on all the relevant and necessary materials. Further, there has been no proper application of mind, by the Detaining Authority, before arriving at such a conclusion. As such, this Court finds it appropriate to quash the impugned detention order. Accordingly, the impugned Detention Order, passed by the second respondent, dated 30.06.2012, is quashed and the Habeas Corpus petition stands allowed. The detenu is directed to be set at liberty, forthwith, unless his detention is required in connection with any other case or cause. jkr To 1.The State of Tamil Nadu Represented by its Secretary to Government, Home, Prohibition and Excise Department, Secretariat, Chennai-9. 2.The District Collector/District Magistrate Collectorate, Kokirarakulam, Tirunelveli District-9. 3.The Superintendent of Central Prison, Palayamkottai Central Prison, Tirunelveli District. 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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