

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.08.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1002 of 2015

TajNisha
S/o.Vijayakumar

...Petitioner

Vs

1. The Commissioner of Police,
Chennai Police,
The Office of the Commissioner of Police,
Egmore, Chennai - 600 008.
2. The Government of Tamilnadu,
Rep by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

...Respondents

Prayer:- This Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records of the first respondent culminating with the order of detention bearing BCDFGISSSV No.278/2015 dated 30.03.2015 passed by the first respondent herein detaining petitioner husband Thiru.Vijayakumar under Section Act XIV of 1982 and quash the same and direct the respondents to produce the body of the detenu, Thiru.Vijayakumar, Son of Velusamy, Male aged about 44 years before this Court, now detained in the Central Prison, Puzhal, Chennai and thereby, set him at liberty.

For Petitioner : Mr.M.Jaikumar

For Respondents : Mr.M.Maharaja, APP

O R D E R

[Order of the Court was made by S.TAMILVANAN, J.]

Petitioner is the wife of the detenu, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in BCDFGISSSV No.278/2015 dated 30.03.2015.

2. The detenu came to adverse notice in the following cases:-

Sl.No.	Police Station and Crime No.	Sections of Law
1.	R-1 Mambalam Police Station, Crime No.1049 of 2014	379 IPC
2.	R-1 Mambalam Police Station, Crime No.1163 of 2014	379 IPC
3.	R-1 Mambalam Police Station, Crime No.1770 of 2014	379 IPC
4.	R-1 Mambalam Police Station, Crime No.551 of 2015	379 IPC

The alleged ground case has been registered against the detenu on 18.02.2015, by the R-1 Mambalam Police Station, in Crime No.644 of 2015 for offences under Sections 341, 294(b), 323, 336, 427, 397 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Learned counsel for petitioner submits that though the detaining authority, in the grounds of detention, has informed that there is likely of the detenu coming out on bail since in similar cases the accused were granted bail in CrI.M.P.No.202 of 2015 and CrI.M.P.No.929 of 2013, in the booklet furnished to the detenu, neither the bail applications nor the bail orders in such cases were enclosed. Instead thereof, the order in CrI.M.P.No.2393 of 2012 was enclosed, which was not at all referred by the detaining authority. It is further submitted that the same would vitiate the order of detention.

4. Per contra, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. However, he submitted that the copy of the bail application in the similar

cases, referred to in the grounds of detention were not supplied to the detenu.

5. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

6. On a perusal of the Booklet furnished by the prosecution, it is seen that it does not contain the copy of the said bail applications and orders in similar cases. The said bail applications and orders in such case were the documents relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such document has not been supplied to the detenu, as it did not form part of the Booklet furnished by the prosecution. Therefore, non supply of the copy of the bail application and other documents in the case to the detenu would vitiate the impugned detention order.

7. The Honourable Supreme Court in M.Ahamed Kutty Vs. Union of India and another (1990-2-SCC-1) has observed thus:-

"7. Considering the facts in the instant case, the bail applications and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case." (Emphasis added)."

8. This Court in Jarinabegam Vs. State of Tamil Nadu by Secretary to Government, Prohibition and Exercise Department, Chennai and another (2007-1-MLJ-Crl-18) relying upon the decision of the Honourable Supreme Court cited supra has held that non supply of the copy of the bail applications in similar cases to the detenu has the effect of vitiating the order or detention.

9. As already analysed by us, in the facts and circumstances of the present case, non-supply of the documents, viz., bail applications, in similar cases, to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such a vital documents, the detenu has lost valuable right to make an effective representation to the authorities concerned.

10. In the light of the above said principles laid down by the Honourable Supreme Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

Accordingly, the impugned detention order passed by the second respondent, detaining the detenu, namely, Vijayakumar S/o. Velusamy, made in BCDFGISSSV No.278/2015 dated 30.03.2015, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gm

To

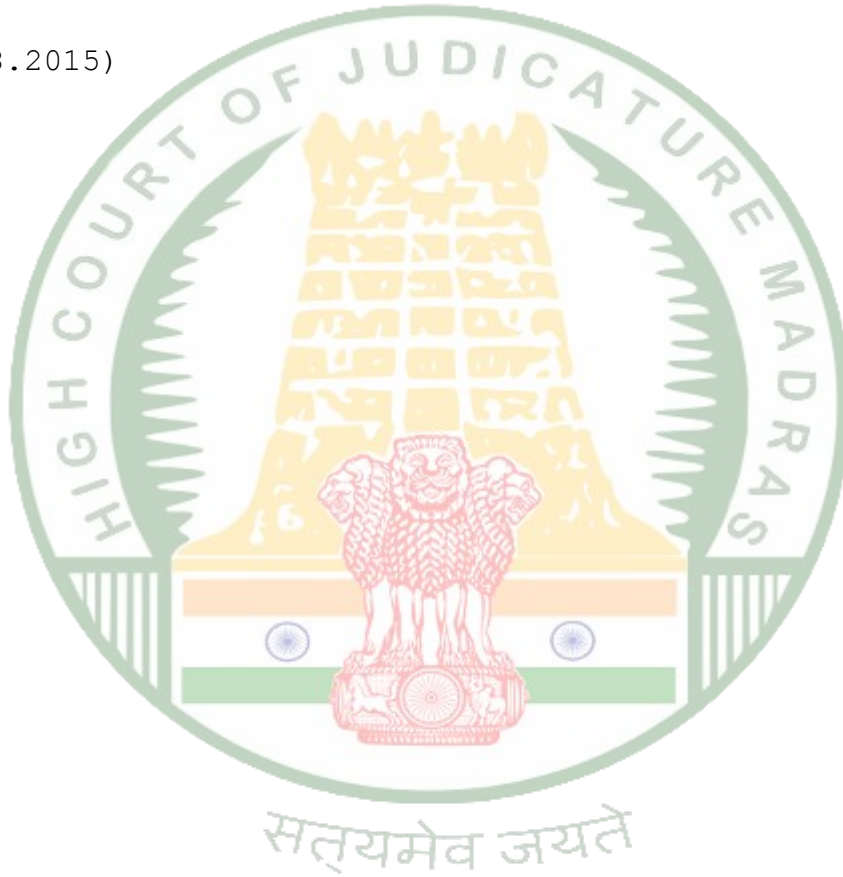
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Home, Prohibition and Excise Department,
Fort St.George, Chennai-600 009.
3. The Superintendent, Central Prison,
Puzhal, Chennai.

4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

5. The Public Prosecutor,
High Court, Chennai.

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SV (CO)
PSI (20.08.2015)



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