

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.1123 of 2015

Sajith
S/o.Rathinamani

...Petitioner

Vs

1. Government of Tamilnadu,
Rep. By its
Principal Secretary,
Home, Prohibition and Excise (XVI) Department,
Fort St.George,
Chennai-600 009.
2. The District Collector and
District Magistrate,
Krishnagiri District.

...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 in S.C.No.20/2015 dated 09.04.2015 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of the petitioner's friend Pramoth, son of Pushpakaran, aged 30 years now confined in Central Prison, Salem.

For Petitioner : Ms.R.Subhadra Devi
For Respondents : Mr.M.Maharaja, APP

O R D E R

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

Petitioner is the friend of the detenu, who has been branded as a "Sand Offender" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in S.C.No.20/2015 dated 09.04.2015.

2. The alleged ground case has been registered against the detenu on 26.03.2015, by the Sub-Inspector of Police, Bagalur Police Station, in Crime No.170 of 2015 for offences under Sections 147, 148, 358, 307 and 379 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Though many grounds have been raised in the petition, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail application in the case, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the 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 case, referred to in the grounds of detention was 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. It is seen from paragraph 4 of the Grounds of Detention that the detaining authority has informed that the co-accused has been granted bail by learned Principal District Judge, Krishnagiri, in Crl.M.P.No.572 of 2015 on 07.04.2015. On a perusal of the Booklet furnished by the prosecution, it is seen that it does not contain the copy of the said bail application of the co-accused; but the bail order of the co-accused [both in English version and in vernacular version] has been furnished in page Nos.78 to 81 of the Booklet. The said bail application was the document 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 application, in similar case, 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, Pramoth S/o.Pushpakaran, made in S.C.No.20/2015 dated 09.04.2015, is quashed and the Habeas Corpus Petition is allowed. The above named detainee 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

1. The Principal Secretary,
Home, Prohibition and Excise (XVI) Department,
Fort St.George,
Chennai-600 009.
2. The District Collector and District Magistrate,
Krishnagiri District.
3. The Superintendent, Central Prison,
Salem.
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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KM (CO)
PSI (21.08.2015)