

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1150/2015

Prabu

...Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The District Collector and
District Magistrate,
Kancheepuram District,
Kancheepuram.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a WRIT OF HABEAS CORPUS to call for the entire records in connection with the order of detention passed by the second respondent dated 16.04.2015 in BCDFGISSSV NO.33/2015 against the petitioner's brother Vinothkumar, S/o.Sankar, aged about 23 years, male, who is confined at Central Prison, Vellore and set aside and same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner सत्यमेव जयते : Mr.S.Senthil Vel

For Respondents : Mr.M.Maharaja, APP

ORDER

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings No. BCDFGISSSV NO.33/2015 dated 16.04.2015, whereby the detenu/brother of the petitioner, by name,

Vinothkumar, S/o.Sankar, aged about 23 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "Bootlegger".

2.Though many grounds have been raised in the petition, Mr.S.Senthil Vel, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3.According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.147/2015 for the offence under Section 4(1)(aaa), 4(1-A) Tamil Nadu Prohibition Act r/w. 6 & 11 of Rectified Spirit Rules 2000 registered by Prohibition Enforcement Wing, Kancheepuram and the bail application filed by him in the said case before the learned District Sessions Judge No.II, Kancheepuram in C.MP.No.453/2015 was pending as on the date of the passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the said case by relying upon a similar case, viz., in the case registered by Prohibition Enforcement Wing, Kancheepuram in the 1st adverse case in Cr.No.34/2015 u/s.4(1)(aaa), 4(1-A) TNP Act wherein bail was granted to the co-accused Dhinakaran by the learned District and Sessions Judge No.II, Kancheepuram in C.MP.No.125/2015 dated 05.02.2015. The said similar case is not that of the co-accused in the ground case of the detenu. The learned counsel would add that admittedly, in this case, the bail application filed by the detenu in the ground case was pending and he is in remand in the said case. When a bail application is pending, there is no presumption that he would come out on bail. No cogent material is available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case and there is no imminent possibility of the detenu coming out on bail in the said case. As the bail application in the ground case is pending, the apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out on bail is not justifiable for the reason that he has pre-judged the matter. Concedingly he could not foresee the nature of the order that would be passed by the Court. By the reason of pendency of the application, one could not easily come to the conclusion that the Court would certainly grant bail to the accused. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of

mind and the subjective satisfaction arrived at by the Detaining Authority that is likelihood of the detenu coming out on bail in the ground case, is a mere ipse dixit without any cogent materials. In support of his contention, he relies on the judgments of the Hon'ble Apex Court reported in [a] 2006 [1] MLJ [CrL.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER]; [b]2005 [1] CTC 577 [VELMURUGAN @ VELU Vs. THE COMMISSIONER OF POLICE] ; [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] and [d] 2008 [3] MLJ (CrL.) 144 [S.ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER].

4.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5.We have heard the learned counsel for both sides with regard to the facts and citation.

6.As could be seen from the above ground in the order of detention, the detenu is in remand in the ground case [Cr.No.147/2015] and the bail application filed by the detenu before the learned District and Sessions Judge No.II, Kancheepuram in C.MP.No.453/2015 was pending as on the date of passing of the detention order. When a bail application is pending, then there is no presumption that the detenu would come out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is a likelihood of his coming out on bail in the ground case would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Further, the similar case referred to and relied upon by the Detaining Authority to infer that the detenu would be granted bail in the ground case, is not that of the co-accused. As rightly contended by the learned counsel appearing for the petitioner, the pendency of the bail application would not certainly enable the detaining authority to conclude that the Court would certainly grant bail to the accused. It is nothing but pre-judging the matter. Therefore on this ground also the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

7. In this connection it is useful to refer the judgment of the Hon'ble Apex Court relied on by the learned counsel for the petitioner.

[a] In 2006 [1] MLJ [CrL.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER], wherein the Hon'ble Apex Court has held as follows:

"The Courts had rejected the bail applications moved by the appellant and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is mere ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record, in the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention."

[b] In 2005 (1) CTC 577 (Velmurugan @ Velu vs. The Commissioner of Police), it has been held as follows:

"3.....unless there is a clear expression by the detaining authority in the grounds of detention with reference to the imminent possibility of the detenu being released on bail by filing bail application, the detaining authority would not choose to pass the detention order. In order to prevent the detenu from committing the acts, which would be disturbance to public order and public health, the detaining authority shall consider the materials and on the basis of subjective satisfaction that there is imminent possibility of the detenu coming out on bail or likelihood of the detenu being released on bail, the detaining authority may pass such an order under Tamil Nadu Act 14 of 1982. When such an essential requirement, namely, the imminent possibility of the detenu coming out on bail, is absent, it has to be held that the order of detention is vitiated."

[c] In 2012 [7] SCC 181 [cited supra] which reads thus:-

"12. In Rekha v. State of Tamil Nadu through

Secretary to Govt. & Anr., (2011) 5 SCC 244, this Court while dealing with the issue held :

".....

In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.....

In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground."

(emphasis supplied)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged

on bail and on the basis of which the detenu could be enlarged on bail.

14. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law."

8. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

9. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The District Collector and
District Magistrate,
Kancheepuram District,Kancheepuram.

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent of Central Prison,
Vellore.

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

VSN (CO)
PSI (26.08.2015)

H.C.P.No.1150/2015



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