

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2015

C O R A M

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

H.C.P.No.1204 of 2015

Priya

... Petitioner

Vs

1. The Government of Tamilnadu,
rep. by its Principal Secretary,
Home, Prohibition and Excise (XVI)
Department, Fort St. George,
Chennai - 9.

2. The Commissioner of Police,
Tiruppur City.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the records in C.No.19/G/IS TPR (C)/2015 dated 8.4.2015 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the petitioner's husband R.Balu @ Balachandran, son of Rathinasamy, aged 37 years, now confined in Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.R.Shanmugasundaram, SC,
for Mrs.Subhadra Devi

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

(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 in C.No.19/G/IS TPR C/2015 dated 08.04.2015, whereby the husband of the petitioner by name R.Balu @ Balachandran, aged 37 years, S/o.Rathinasamy, was ordered to be

detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. Though many grounds have been raised in the petition, Mr.R.Shanmugasundaram, the learned senior 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.5/2015 registered by the 15-Velampalayam Police Station and he filed bail application in the said case before the learned Principal Sessions Judge, Tiruppur in C.M.P.No.591/2015 and the same 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 very likely of the detenu coming out on bail in the ground case by relying upon the similar case registered by Singanallur Police Station Cr.No.1887/2013 for the offence u/s. 147, 148, 120(b) and 302 IPC, in which the accused was granted bail by the learned Principal District and Sessions Judge, Coimbatore in CMP No.586/2014 on 06.03.2014. The learned senior counsel would add that admittedly, in this case, the bail application filed by the detenu in the ground case is pending and he is in remand in the said case. When a bail application is pending, there is no presumption that the detenu would be granted bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case. The apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out on bail as the bail application in the ground case is pending 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. Further, the non-furnishing of the particulars of the similar case referred to and relied upon, would deprive of the detenu from making an effective representation. 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 there is real possibility of the detenu coming out on bail 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 [Cr1.] 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] ; [d]2013 [1] LW (Cr1.) 460 [LAKSHMI BAI NAT VS. THE SECRETARY TO THE GOVERNMENT, HOME, PROHIBITION AND EXCISE DEPT., FORT ST.GEORGE, CHENNAI-9 AND ANOTHER] and [e] 2008 [3] MLJ (Cr1.) 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 evidenced from paragraph 6 of the grounds of detention, the detenu is in remand in the ground case [Cr.No.5/2015] and the bail application filed by him in the said case before the learned Principal Sessions Judge, Tiruppur in C.M.P.No.591/2015 was pending as on the date of passing of the detention order. When a bail application is pending, 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 every likelihood of the detenu coming out on bail in the ground case by placing reliance on a similar 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. As rightly contended by the learned senior 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. Therefore, the impugned order is passed on mere ipse-dixit and the order of detention cannot be sustained in the eye of law.

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 [Cr1.] 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."

[d]In the judgment reported in 2013 [1] LW (Crl.) 460 [CITED SUPRA], the Division bench of this Court at Madurai has held as follows:-

4. In this regard, the learned counsel for the petitioner would rely on the Judgment of a Division Bench of this Court in Jother vs. The Secretary to Government, reported in 2012 (2) LW (Crl.) 527, wherein, in identical circumstances, in Paragraph No.17, the Division Bench has held as follows:

"17. Further, unless, the similar cases referred to by the Detaining Authority, in the grounds of detention, are comparable with the cases relating to the detenu, in all aspects, it would not be open to the Detaining Authority to arrive at his conclusion that the detenu would be enlarged on bail. In the present case, It has not been shown that all the relevant materials relating to the similar cases, referred to by the Detaining Authority had been furnished to the detenu, in order to enable him to make an effective representation against the detention order. The failure of the Detaining Authority to furnish all the materials would, no doubt, cause substantial prejudice to the detenu, resulting in the failure on the part of the Detaining Authority in following the mandate, enshrined in Clause(5) of the Article 22 of the Constitution of India."

5. Relying on the above Judgment of the Division Bench, the learned counsel would submit that in the case on hand also, since the materials relating to the similar case have not been furnished to the detenu except bail order copy alone and since the

satisfaction arrived at by the Detaining Authority is not based on any relevant materials, the Detention Order is liable to be set aside.

7. Keeping in view the above legal principles, if we look into the facts involved in the case, there can be no dispute that the detaining authority had come to the conclusion that there is real possibility of the accused coming out on bail and the said conclusion is based on the fact that in a similar case in Woraiyur P.S.Cr.No.989/2010, bail was granted to the accused therein. But, it is the contention of the petitioner that relevant documents relating to the said case, such as FIR, Mahazar, etc., have not been furnished. To the contrary, only copy of the bail order has been given. In our considered opinion, non-furnishing of all these material documents to the detaining authority and non-consideration of the same would only indicate the total non-application of mind on the part of the detaining authority. The detaining authority in a mechanical fashion only on considering the bail order has come to the conclusion that there is a real possibility of the detenu coming out on bail."

[e]In 2008 [3] MLJ (Cr1.) 144 [S.ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER], it has been held as follows:

"Where a bail application filed by the detenu was pending before the Court and the Detaining Authority coming to the conclusion that there was a real possibility of the detenu coming out on bail, even prior to the passing of an order on bail application, held the detention order was passed without proper application of mind, rendering it vitiated."

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 dated 08.04.2015 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(L.A)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Principal Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise (XVI)
Department, Fort St. George,
Chennai - 9.
2. The Commissioner of Police,
Tiruppur City.
3. The Superintendent,
Central Prison, Coimbatore.
(In duplicate for Communication to Detenu)
4. The Public Prosecutor,
High Court, Chennai.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to M/s.R.Subhadra Devi, Advocate, S.R.No.36982

KJI (CO)
CA(20/08/2015)

H.C.P.No.1204 of 2015