

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.08.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1226 of 2015

Rukku

.. Petitioner/Wife of
detenue

Vs

1.The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

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

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus calling for the entire records connected with the order of the second respondent herein in BCDFGISSSV No.42/2015 dated 06.05.2015 against the detenu, namely, Kemburaj son of Chokkalingam aged about 50 years, now confined at Central Prison, Puzhal, Chennai and set aside the same, consequently directing the respondents herein to produce the body and person of the detenu before this Court and set him at liberty forthwith.

For Petitioner : Mr.A.Murugavel

For Respondents : Mr.M.Maharaja

Additional Public Prosecutor

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ORDER
(Order of the Court made by S.TAMILVANAN,J.)

Challenge is made to the order of detention passed by the second respondent vide Proceedings in BCDFGISSSV No.42/2015 dated 06.05.2015, whereby the detenu, viz., Kemburaj, S/o.Chokkalingam, aged 50 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 "GOONDA".

2. Though many grounds have been raised in the petition, 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 is in remand in the ground case in Cr.No.151/2015 registered by the Prohibition Enforcement Wing, Mamallapuram @ Thirukalukundram and he has filed bail application in CrI.MP.No.1102/2015 before the learned Principal District and Sessions Judge, Chengalapattu on 22.04.2015 and the same was pending as on the date of the passing of the detention order. The Detaining Authority has stated that there is a possibility of the detenu coming out on bail in the ground case and that if the detenu comes out on bail he will indulge in such further activities, which are prejudicial to the maintenance of public health and public order. But, the Detaining Authority has not specifically stated that there is a "REAL POSSIBILITY" or "IMMINENT POSSIBILITY" of the detenu coming out on bail in the ground case. He adds that absence of the said expression in the grounds of detention would vitiate the order of detention. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu would likely to get bail in the ground case. 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 the detention. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind. In support of his contention that the expression in explicit terms about the imminent possibility of the detenu coming out on bail should be there in the order of detention and the absence would vitiate the order of detention, he relies on the judgments of the Hon'ble Apex Court reported in [a] 2006 [1] MLJ [CrI.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] and [b]2005 [1] CTC 577 [VELMURUGAN @ VELU Vs. THE COMMISSIONER OF POLICE].

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 5 of the grounds in the order of detention, it is seen that the detenu is in remand in the ground case and the bail application filed by him before the learned Principal District and Sessions Judge, Chengalpattu in CrI.MP.No.1102/2015 is pending as on the date of passing of the detention order. But, as evidenced from the above ground, the Detaining Authority has not stated specifically that there is an "IMMINENT POSSIBILITY" or "REAL POSSIBILITY" of the detenu coming out on bail. This would show that the Detaining Authority passed the order of detention mechanically and without application of mind and the facts do not justify the detention. Moreover, the expression, in explicit terms about the imminent possibility of the detenu coming out on bail is absent. If that be so, the absence of the said expression would certainly vitiate the order of detention as held in 2005 [1] CTC 577 [cited supra]. Therefore, the subjective satisfaction arrived at by the detaining authority that if the detenu is released on bail, he will indulge in similar activities that are prejudicial to the maintenance of supplies of commodities essential to the community, 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. 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 [CrI.] 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 by the Division Bench of this Court as follows:

"3.It is settled law as laid down by the Supreme Court in the decisions Kamarunnisa V. Union of India, 1991 [1] SCC 128 : 1991 SCC [Cri.] 88 and Rivadeneyta Ricardo Augustin V. Government of Delhi, 1994 Supp. [1] SCC 597 : 1994 SCC [Cri.] 354 ; that 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.

4.On going through the relevant paragraph of the grounds of detention, we only notice that there is a mere reference of the possibility of the detenu coming out on bail. Admittedly, the expression, in explicit terms about the imminent possibility of the detenu coming out on bail, is absent. In the absence of such expression in the grounds of detention, we are to conclude that the impugned order of detention is liable to be set aside."

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.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Secretary to the Government,
Government of Tamil Nadu,
(Home) Prohibition and Excise Department,
Fort St. George, Chennai - 600 009.

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

3. The Superintendent,
Central Prison, Puzhal, Chennai.

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

5. The Public Prosecutor,
High Court, Chennai.

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