

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.08.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1318 of 2015

Ezhulamalai
S/o.Murugesan

...Petitioner

Vs

1.The State of Tamilnadu,
represented by its Secretary to Government
(Home), Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.

2.The District Collector and the District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.

...Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the records relating to the impugned order of detention passed by the second respondent in D.O.No.22/2015-C 2 dated 07.04.2015 and set the same and consequently direct the respondent to produce the detainee Vennila, W/o.Ezhumalai, female aged 45 years, now confined in Special Prison for Women at Vellore, before this Court and set her at liberty forthwith.

For Petitioner : Mr.B.Jawahar

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 D.O.No.22/2015-C2 dated 07.04.2015, whereby the wife of the petitioner by name Vennila,

W/o.Ezhumalai, was ordered to be detained under the provisions of 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. As per the grounds of detention dated 07.04.2015, passed by the second respondent, the detenu came to adverse notice in the following cases:

i) Adverse Cases:

S1 No.	Name of the Police station and Crime No.	Section of law
1	Tiruvannamalai East Police Station Cr.No.144/2014	4(1)(aa) r/w 4(1-A)(ii) TNP Act @ 4(1)(aa) TNP Act
2	Tiruvannamalai East Station Cr.No.40/2015	4(1)(a) r/w.4(1-A)(ii) TNP Act @ 4(1)(a) TNP Act
3	Tiruvannamalai PEW Cr.No.82/2015	4(1)(a) TNP Act

(ii) Ground Case:

S1 No.	Name of the Police station and Crime No.	Section of law
1	Thiruvannamalai East Police Station Cr.No.167/2015	4(1)(i) 4(1)(aaa) r/w.4(1-A)(ii) TNP Act

3. Though many grounds have been raised in the petition, Mr.B.Jawahar, 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.

4. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.167/2015 registered by the Tiruvannamalai Police Station and one of the adverse cases in the said Police Station in Cr.No.40/2015, he has not filed any bail application in the ground case and one of the adverse case in Cr.No.40/2015, as on the date of the passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the ground case by relying upon the similar case registered by Vettavalam Police Station Cr.No.499/2011 for offences u/s.4(1)(i), 4(1)(aaa) r/w.4(1-A) TNP Act wherein bail was granted to the accused by the

District Sessions Court, Tiruvannamalai in CrI.M.P.No.3918 on 14.11.2011. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail application in the ground case and one of the adverse case in Cr.No.40/2015 and he is in remand in the said cases. When no bail application is filed, there is no real possibility of the detenu coming out on 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 particulars of the similar case referred to and relied upon by the detaining authority where bail is granted, are not that of the co-accused so as to compare that case with that of the detenu. Therefore, there is no imminent possibility of the detenu coming out on bail in the ground case on the basis of the bail granted in the similar case. 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 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 [CrI.] 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] and [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR].

5.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.

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

7.Before advertng to the arguments of the counsel for both sides, we would like to reproduce the relevant portion of the grounds of the detention order, viz., paragraph 5, on which much reliance has been placed by the learned counsel appearing for the petitioner:

"5.I am aware that Thiru Thirumalai was produced before the Judicial Magistrate No.IV [Incharge], Vellore on 12.03.2013 in Vellore North [L&O] Police Station ground case Cr.No.257/2013 for offences u/s.302 IPC and was remanded to judicial custody and lodged at

Central Prison, Vellore as remand prisoner till 25.03.2013. Periodically, his remand period was further extended till 07.05.2013.

I am aware that Thiru Thirumalai who is in remand in Vellore North [L&O] Police Station Cr.No.257/2013 for the offences u/s.302 IPC has not filed any bail petition so far. In similar cases registered at Thalaivasal Police Station Cr.No.53/2013 u/s.302 IPC, bail was granted to the accused by the Honourable High Court, Madras in CrI.OP.Nos.9216 & 9262/2013 on 15.04.2013 and hence, there is a real possibility of his [Thiru Thirumalai] coming out on bail by a filing bail application for the above case before the appropriate court. If he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order. Further recourse to normal criminal law would not have the desired effect of effectively preventing his from indulging in such activities, which are prejudicial to the maintenance of public health and public order. On the materials placed before me, I am fully satisfied that Thiru Thirumalai is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities which are prejudicial to the maintenance of public order."

8.As could be seen from the above ground in the order of detention, the detenu is in remand in the ground case [Cr.No.257/2013] and he has not filed any bail application in the said case as on the date of passing of the detention order. When no bail application is filed, there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility 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. The Detaining Authority has relied on the similar case to infer that the detenu would be granted bail in the ground case ; but the particulars of the similar cases are not that of the co-accused, so as to compare and arrive at a conclusion that on the basis of the said similar case, the detenu would be released on bail. Therefore, the impugned order is passed on mere Ipse-dixit and the order of

detention cannot be sustained in the eye of law.

9. 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."

10. 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.

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

12. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in D.O.No.22/2015-C 2 dated 07.04.2015 passed by the second respondent is set aside. The detenu, viz., Vennila, Son of Ezhumalai, aged 45 years, is directed to be released forthwith unless her presence is required in connection with any other case.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
(Home), Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
- 2.The District Collector and the District Magistrate,
Tiruvannamalai District,
Tiruvannamalai.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Special Prison for Women,
Vellore.
- 5.The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

H.C.P.No.1318 of 2015

VSN (CO)
PSI (23.09.2015)



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