

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

CORAM

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

H.C.P.No.1334 of 2015

Kavitha
W/o.Balaji

... Petitioner

vs.

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus seeking a direction to produce the body of the detenu by name Balaji, aged 30 years, S/o.Thimma Naidu, presently confined at Central Prison, Vellore, before this Court and set him at liberty forthwith after calling for the records pertaining to the detention order dated 11.05.2015 made in No.C3.D.O.No.51/2015 on the file of the second respondent and quash the same.

For Petitioner : Mr.C.Munusamy

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R
[Order of the Court was made by S.TAMILVANAN, J.]

Petitioner is the wife of the detenu, who has been branded as a "Bootlegger" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in C3.D.O.No.51/2015 dated 11.05.2015.

2. As per the grounds of detention dated 11.05.2015, passed by second respondent, the detenu came to adverse notice in the following cases:

S1 No.	Name of the Police station and Crime No.	Section of law
1	Vaniyambadi Prohibition Enforcement Wing, Crime No.114 of 2015	4(1)g TNP Act, 1937 (Act 10/1937)
2	Vaniyambadi Prohibition Enforcement Wing, Crime No.142 of 2015	4(1)g TNP Act, 1937 (Act 10/1937)
3	Vaniyambadi Prohibition Enforcement Wing, Crime No.164 of 2015	4(1)g TNP Act, 1937 (Act 10/1937)

The alleged ground case has been registered against the detenu on 16.04.2015 by the Vaniyambadi Prohibition Enforcement Wing, in Crime No.204 of 2015 for offences under Sections 4(1)(aaa) & 4(1-A)ii Tamil Nadu Prohibition Act, 1937 r/w 328 IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. According to learned counsel appearing for petitioner, insofar as the ground case in Crime No.204 of 2015 is concerned, the detenu has filed bail application before Principal Sessions Court, Vellore, in CrI.M.P.No.1551/2015 and the said application was pending as on the date of the passing of the detention order. But, the detaining authority has arrived at the subjective satisfaction that it is very likely of the detenu coming out on bail in the ground case as in a similar case registered in Vaniyambadi Prohibition Enforcement Wing, Crime No.173/2015 for offences u/s.4(1)(aaa) 4(1-A)ii Tamil Nadu Prohibition Act, 1937 (Act 10/1937) r/w 328 IPC, bail was granted to the accused person by learned Principal Sessions Judge, Vellore, in CrI.M.P.No.1383 of 2015. This according to learned counsel appearing for petitioner is bereft of particulars without cogent materials, which vitiates the impugned order of detention. Therefore, the

detaining authority has arrived at subjective satisfaction that it is very likely of the detainee coming out on bail in the ground case since in similar cases bails are granted by the Courts and if she comes out on bail she will indulge in such further activities, which are prejudicial to the maintenance of public order. Learned counsel would add that admittedly, in this case, the bail application filed by the detainee in the ground case is pending before the Court concerned. When the bail application is pending, then there is no presumption that the detainee would come out on bail. No cogent materials are available before the Detaining Authority to conclude/to apprehend that the detainee 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. Further, the Detaining Authority has also relied on a similar case wherein bail was granted to an accused; but he has not stated whether the said accused is the co-accused of the detainee herein either in the ground case or in the adverse cases. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind.

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 learned counsel on either side and perused the materials available on record.

6. On perusal of the grounds of detention, we find that the bail application filed by the detenu in the ground case in Cr.No.204 of 2015 before Principal Sessions Court, Vellore, in Crl.M.P.No.1551 of 2015 was pending as on the date of passing of the detention order. If that be so, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail and indulge in such further activities which are prejudicial to the maintenance of public order is only an ipse dixit and that would vitiate the order of detention. When the bail application is pending, then there is no presumption that bail would be granted. Furthermore, it has been stated that in a similar case, bail was granted to the accused by the Principal Sessions Court, Vellore, in Crl.M.P.No.1383 of 2015; but it is not stated by the Detaining Authority as to whether the said accused persons are the co-accused

of the detenu in the ground case. Therefore, the impugned order passed suffers from infirmity and the same cannot be sustained in the eye of law.

Accordingly, the impugned detention order passed by second respondent, detaining the detenu, namely, Balaji, aged 30 years, S/o.Thimma Naidu, made in C3.D.O.No.51/2015 dated 11.05.2015, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gm

To

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

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