

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.07.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.137/2015

Pandiyan
Petitioner

..

Vs

1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.

2.The District Collector & District Magistrate
Thiruvallur District, Thiruvallur.

..

Respondents

Prayer:- This Petition is filed under Article 226 of the Constitution of India to issue a writ of Habeas corpus call for the records relating to the detention order dated 22.12.2014 passed by the 2nd respondent in BCDFGISSV No.27/2014 and quash the same and direct the respondents herein to produce the petitioner's daughter namely Desammal, wife of Karunakaran, female, aged about 53 years, residing at No.88, Thiruvalluvar Street, Thirumazhisai, Thiruvallur District who is presently undergoing detention in the Special Prison for Women, Puzhal, Chennai u/s.3[1] 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) before this Court and set her at liberty forthwith.

For Petitioner : Mr.C.Prabakaran

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 in BCDFGISSV No.27/2014 dated 22.12.2014, whereby the detenue/the daughter of the petitioner herein, by name, Desammal, wife of Karunakaran, aged 53 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 her as a "Drug Offender".

2.Though many grounds have been raised in the petition, Mr.C.Prabakaran, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail application in similar case, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detainee coming out on bail, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention.

3.Per contra, Mr.M.Maharaja, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. However, he submitted that the copy of the bail application in similar case, referred to in the grounds of detention was not supplied to the detainee.

4.We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

5.It is seen from paragraph No.5 of the Grounds of Detention that in similar case, the accused Iyyappan was released on bail by the learned Principal District and Sessions Judge, Arakkonam, in CrI.MP.No.5145/2014 in respect of the case in Cr.No.273/2014 for the offence u/s.4[1][aaa], 4[1-A][ii] TNP Act r/w 420, 468, 471 IPC on the file of Arakkonam Prohibition Enforcement Wing. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain the copy of the said bail application in similar case ; but only the bail order [in vernacular version] was furnished in page Nos.80 and 81 of the Booklet. The said bail application filed in similar case was the documents relied upon by the Detaining Authority to come to a subjective satisfaction that the detainee was likely to be released on bail. Admittedly, such document has not been supplied to the detainee, as it did not form part of the Paper Book furnished by the Prosecution. Therefore, non supply of the copy of the bail application in similar case to the detainee would vitiate the impugned detention order.

6.The Honourable Supreme Court in M.Ahamed Kutty Vs. Union of India and another (1990-2-SCC-1) has observed thus:-

"7. Considering the facts in the instant case, the bail application and the bail order were vital materials

for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detainee with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detainee's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detainee illegal and entitling the detainee to be set at liberty in this case." (Emphasis added)."

7. This Court in *Jarinabegam Vs. State of Tamil Nadu by Secretary to Government, Prohibition and Exercise Department, Chennai* and another (2007-1-MLJ-Crl-18) relying upon the decision of the Honourable Supreme Court cited supra has held that non supply of the copy of the bail application in similar case to the detainee has the effect of vitiating the order or detention.

8. As already analysed by us, in the facts and circumstances of the present case, non-supply of the copy of the bail application in similar case, to the detainee has the effect of vitiating the impugned detention order. Further, due to non-supply of such vital document, the detainee has lost valuable right to make an effective representation to the authorities concerned.

9. In the light of the above said principles laid down by the Honourable Supreme Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

10. In the result, this Habeas Corpus Petition is allowed. The impugned detention order is set aside. The detainee is directed to be released forthwith, unless her presence is required in connection with any other case.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

AP

To

- 1.The Secretary to Government,
State of Tamil Nadu
Home, Prohibition & Excise Department
Fort St George, Chennai 600 009.
- 2.The District Collector & District Magistrate
Thiruvallur District, Thiruvallur.
- 3.The Superintendent
Special Prison for Women,
Puzhal, Chennai.
4. The Joint Secretary to Government
Public (law and order)
Fort Saint George, Chennai-9
- 5.THE PUBLIC PROSECUTOR,
HIGH COURT, CHENNAI.

HCP.No.137/2015

KM (CO)
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