

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

C O R A M

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

Habeas Corpus Petition No.1409 of 2015

Sumiya Banu
W/o.Javid

... Petitioner

-Vs-

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

2. The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai - 600 007.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the records relating to the detention order in Memo No.382/BCDFGISSSV/2015, dated 09.05.2015 passed by second respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Javid S/o.Hyath Basha, aged about 22 years, the detenu now confined in Central Prison, Puzhal, Chennai before this Hon'ble Court and set the Petitioner's Husband Javid S/o.Hyath Basha aged about 22 years the deteu herein at liberty.

For Petitioner : Mr.D.Gopi Krishnan

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R
(The order of the Court was made by S.TAMILVANAN, J.)

The petitioner is the wife of the detenu, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of the second respondent passed in Memo No.382/BCDFGISSSV/2015, dated 09.05.2015.

2. The detenu came to adverse notice in the following cases:-

Sl.No	Police Station and Crime No.	Sections of Law
1	E.1 Mylapore Police Station, Crime No.2251 of 2014	420 IPC
2	E.1 Mylapore Police Station, Crime No.961 of 2015	420 IPC
3	E.1 Mylapore Police Station, Crime No.1030 of 2015	420 IPC
4	E.5 Foreshore Estate Police Station, Crime No.114 of 2014	420 IPC

The alleged ground case has been registered against the detenu on 28.03.2015, by the E.5 Foreshore Estate Police Station, in Crime No.1011 of 2015 for offences under Sections 341, 392, 397, 336 and 506(ii) 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. 1011 of 2015 on the file of E.5 Foreshore Estate Police Station and the adverse case in Crime No.114 of 2014 on the file of E.5 Foreshore Estate Police Station are concerned, the detenu has filed bail applications in CrI.M.P.No.7408 of 2015 before learned Principal Sessions Judge, Chennai and M.P.No.1557 of 2015 before learned XXIII Metropolitan Magistrate, Saidapet, Chennai, respectively and the said applications were 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 those cases as in similar cases viz., Crime No.416 of 2014 on the file of E.1 Mylapore Police Station for offence u/s.420 IPC and Crime No.2705 of 2014 on the file of D.1 Triplicane Police Station for offences u/s.341, 294(b), 323, 336, 427, 392, 397 and 506(ii) IPC, bail was granted to the accused by learned XVIII Metropolitan Magistrate, Saidapet, Chennai, in CrI.M.P.No.5910 of 2014 and Principal Sessions

Court in Crl.M.P.No.18636 of 2014 respectively. This according to learned counsel 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 detenu coming out on bail in the ground case and in the adverse case since in similar cases bails are granted by the Courts and if he comes out on bail he will indulge in such further activities, which are prejudicial to the maintenance of public order. The learned counsel would add that admittedly, in this case, the bail applications filed by the detenu in the ground case and in the adverse case is pending before the Court concerned. When the bail application is pending, then there is no presumption that the detenu would come out on bail. 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 and in the adverse 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 detenu 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 the learned counsel on either side and perused the materials available on record.

6. On a perusal of the grounds of detention, we find that the bail applications filed by the detenu in the ground case in Crime No.348/2013 and the adverse case in Crime No.114 of 2014 were 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. Further more, it has been

stated that in a similar case, bail was granted to the accused; 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 the second respondent, detaining the detenu, namely, Javid S/o.Hyath Basha, aged about 22 years, made in Memo No.382/BCDFGISSSV/2015, dated 09.05.2015, 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 IV)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Secretary, Home, Prohibition and Excise Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Police,
The Commissioner Office,
Vepery, Chennai - 600 007.
3. The Superintendent of Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor
High Court, Chennai.

H.C.P.No.1409 of 2015

KK(CO)
CA(30/09/2015)