

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2015

CORAM

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

H.C.P.No.1516 of 2015

Paulkani

.. Petitioner

vs.

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

2.The Commissioner of Police,
The Detaining Authority,
Tiruppur City, Tiruppur District.

3.The Sponsoring Authority,
The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus seeking a direction to call for the records of the detention made in Cr.C.No.28/G/IS TPR (a)/2015 dated 14.05.2015 passed by the second respondent/the Commissioner of Police, Tiruppur City/detaining authority, the second respondent herein and set aside the same and direct the respondent to produce the detenu before this Court and set the detenu M.Karuppusamy son of Maharaja Nadar aged about 24 years as Goonda and was confined in Central Prison, Coimbatore District at liberty forthwith.

For Petitioner
For Respondents

: Mr.P.Kalimuthu
: Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

[Order of the Court was made by S.TAMILVANAN, J.]

Petitioner is the mother of the detenu, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in C.No.28/G/IS TPR ©/2015 dated 14.05.2015.

2. As per the grounds of detention dated 14.05.2015, 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	Tiruppur City, Tiruppur Rural PS Crime No.994 of 2014	392 IPC
2	Tiruppur City, Kamanaickenpalayam PS Crime No.211 of 2014	392 IPC
3	Tiruppur City, Kamanaickenpalayam PS Crime No.385 of 2014	392 IPC
4	Tiruppur City, Mangalam PS Crime No.111 of 2015	392 IPC
5	Tiruppur City, Tiruppur South PS Crime NO.130 of 2015	392 IPC

The alleged ground case has been registered against the detenu on 12.02.2015 by the Tiruppur South Police Station in Crime No.134 of 2015 for offences under Sections 397 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.134 of 2015 is concerned, the detenu has filed bail application before Principal District and Sessions Court, Tiruppur, in C.M.P.No.535/2015 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 Madurai City, Jaihindupuram B6 Police Station Crime No.90/2011 for offences u/s.397 and 506(ii) IPC, bail was granted to the accused person by learned Principal Sessions and District Judge, Madurai, in Cr.M.P.No.622 of 2011. 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 detenu 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 detenu in the ground 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. 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, it is seen that in paragraph No.8 of the grounds of detention, the detaining authority has stated that the detenu is in remand in the adverse cases also. But the detaining authority has not stated as to whether any bail application has been filed by the detenu in respect of 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.134 of 2015 before Principal District and Sessions Court, Tiruppur, in C.M.P.No.535 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 in the grounds of detention that the detenu is in remand in the adverse cases also, but the detaining authority has not stated anything as to whether the detenu has filed any bail application in respect of the adverse cases. 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, M.Karuppasamy, aged 24 years, S/o.Maharaja Nadar, made in C.No.28/G/IS TPR ©/2015 dated 14.05.2015, 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The State of Tamil Nadu
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The Detaining Authority,
Tiruppur City, Tiruppur District.
- 3.The Sponsoring Authority,
The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.
- 4.The Superintendent of Central Prison,
Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Joint Secretary to Government,
Public Law and Order Fort St.George,
Chennai-9

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