

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

CORAM

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

H.C.P. No.1646 of 2015

Chandra

.. Petitioner

Vs.

- 1.The Commissioner of Police,
Office of the Commissioner of Police,
Egmore, Chennai.
- 2.The Secretary,
Government of Tami Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat,
Fort St.George, Chennai - 600 009.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus, to call for the records pertaining to the order of detention passed by the first respondent herein and made in No.479/B.C.D.F.G.I.S.S.S.V./2015 dated 20.06.2015 and to set aside the same and directing the third respondent to produce the body of the detenu Raja @ Rajan, S/o.Arumugam, aged about 24 years, now confined in Central Prison, Puzhal, Chennai before this Court and thereby setting him at liberty.

For Petitioner : Mr.Ganesh Rajan

For Respondents: Mr.M.Maharaja,

Additional Public Prosecutor

O R D E R

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings No.479/B.C.D.F.G.I.S.S.S.V./2015 dated 20.06.2015 whereby the detenu/son of the petitioner, by name, Raja @ Rajan, son of

Arumugam, aged about 24 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immortal Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982] branding him as a "GOONDA".

2. Though many grounds have been raised in the petition, Mr.Ganesh Rajan, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail applications in similar cases, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detenu 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 applications in similar cases, referred to in the grounds of detention were not supplied to the detenu.

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.4 of the Grounds of Detention that in similar cases, the accused were released on bail by the learned Principal Sessions Judge, Chennai in CrI.M.P.No.10992 of 2011 in respect of the case in Crime No.1640 of 2011 for the offences under Sections 294[b], 341, 336, 307, 397 and 506[iii] IPC on the file of V-5 Thirumangalam Police Station, Chennai and by this Court in CrI.O.P. No.13843 of 2009 in respect of the case in Crime No.301 of 2009 for the offences under Sections 147, 148, 341 and 302 IPC on the file of R-7 K.K.Nagar Police Station, Chennai. 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 applications in similar cases and only the respective bail orders were furnished to the detenu in page Nos.245 to 257 [in English and Vernacular version] in the Booklet placed before us. The said bail applications filed in similar cases were the documents relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such documents have not been supplied to the detenu, as it did not form part of the Paper Book furnished by the Prosecution. Therefore, non supply of the copy of the bail applications in similar cases to

the detenu would vitiate the impugned detention order. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail application moved by the detenu in the ground case or in the adverse cases, necessarily would have to be considered by the Court concerned solely on merits, uninfluenced by this 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 detenu 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 detenu'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 detenu illegal and entitling the detenu 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 applications in similar cases to the detenu 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 applications in similar cases, to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such a vital document, the detenu 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 detenu is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Police,
Office of the Commissioner of Police,
Egmore, Chennai.
- 2.The Secretary,
Government of Tami Nadu,
Home, Prohibition and Excise Department,
Chief Secretariat,
Fort St.George, Chennai - 600 009.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor
High Court, Madras.
5. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai. 600 009.

H.C.P. No.1646 of 2015

EV(CO)
Eu 30.08.15

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