

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.08.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1708 of 2015

T.Mathialagan
S/o.Deidonish

.. Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai-600 009.

2.The Commissioner of Police,
Chennai Police, office of the Commissioner of
Police (Goondas Section)
Vepery, Chennai-7.

... Respondents

Prayer:- This Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd respondent dated 23.03.2015 in Memo.No.265/BCDFGISSSV/2015 against the petitioner's brother Sudharsan @ Nagesh, son of Deidonish, aged about 40 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court.

For Petitioner : Mr.V.Paarthiban

For Respondents : Mr.M.Maharaja, APP

O R D E R

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

Petitioner is the brother of the detenu, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under order of the second respondent passed in BCDFGISSSV No.265/2015 dated 23.03.2015.

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

Sl.No.	Police Station and Crime No.	Sections of Law
1.	M-2 Madhavaram Milk Colony, P.S.Cr.No.635 of 2015	449, 341, 294(b), 324, 307,302 and 506(ii) IPC

The alleged ground case has been registered against the detenu on 15.02.2015, by the Inspector of Police, Law and Order, M-2 Madhavaram Milk Colony Police Station, in Crime No.637 of 2015 for offences under Sections 294(b), 336, 427, 307 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Though many grounds have been raised in the petition, 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 the similar case, 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.

4. Per contra, 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 the similar case, referred to in the grounds of detention was not supplied to the detenu.

5. 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.

6. It is seen from the Grounds of Detention that in the similar case, the accused was released on bail by the learned Principal Sessions Judge, Chennai, in Crl.M.P.No.6051 of 2014 in respect of the case in Cr.No.288/2014 for the offences u/s.341, 294 (b), 324, 323, 307, 336 and 506(ii) IPC on the file of H-6 Dr.R.K.Nagar Police Station. On a perusal of the Booklet furnished by the prosecution, it is seen that it does not contain the copy of the said bail application in such case; but the bail order of the said similar case [both in English version and in vernacular version] has been furnished in page Nos.98 to 101 of the Booklet. The said bail application filed in such case was the document relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such document has not been supplied to the detenu, as

it did not form part of the Booklet furnished by the prosecution. Therefore, non supply of the copy of the bail application and other documents in the case to the detenu would vitiate the impugned detention order.

7. 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 applications 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)."

8. 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 of detention. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail applications 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 the order of this Court.

9. As already analysed by us, in the facts and circumstances of the present case, non-supply of the documents, viz., 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 documents, the detenu has lost valuable right to make an effective representation to the authorities concerned.

10. 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.

Accordingly, the impugned detention order passed by the second respondent, detaining the detenu, namely, Sudharsan @ Nagesh, S/o.Deidonish, made in Memo.No.265/BCDFGISSSV/2015 dated 23.03.2015, 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/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

gm

To

- 1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai-600 009.
- 2.The Commissioner of Police,
Chennai Police, office of the Commissioner of
Police (Goondas Section)
Vepery, Chennai-7.
- 3.The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Secretary to Government,
Public (Law & Order),
Fort St.George, Chennai 9.
- 5.The Public Prosecutor,
High Court, Chennai.

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