

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.1744 of 2015

Kalaiselvi

.. Petitioner

Vs.

1.Government of Tamil Nadu,
rep. by its Principal Secretary,
Home, Prohibition and
Excise (XVI) Department,
Fort St. George, Chennai - 600 009.

2.The District Collector and
District Magistrate,
Erode District, Erode.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus calling for the records in Cr.M.P. No.21/Drug Offender/2015/C1 dated 15.06.2015 on the file of the second respondent herein and quash the same and direct the respondents herein to produce the body of the detenu Vijayakumar @ Vijayan @ Viji, aged 31 years, son of Mahalingam, now confined in Central Prison, Coimbatore, before this Court and to set him at liberty.

For Petitioner : Ms.R.Subhadra Devi

For respondents: Mr.M.Maharaja,
Additional Public Prosecutor,

ORDER

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Cr.M.P. No.21/Drug Offender/ 2015/C1 dated 15.06.2015, whereby the detenu viz. Vijayakumar @ Vijayan @ Viji, aged 31 years, son of Mahalingam, was ordered to be detained under the provisions of 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 him as a "Drug Offender".

2. Though many grounds have been raised in the petition, Ms.R.Subhadra Devi, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.244/2015 registered by Bhavani Police Station for the offence under Sections 8(c), 20(b)(ii)(B) Narcotic Drug and Psychotropic Substances Act and that there is no mention as to whether the detenu has filed any bail application in the said case as on the date of the passing of the detention order. Learned counsel for the petitioner contended that the Detaining Authority has also not specifically stated that there is a "REAL POSSIBILITY" or "IMMINENT POSSIBILITY" of the detenu coming out on bail in the said case, if he filed any bail application in the said case. He adds that absence of the said expression in the grounds of detention would vitiate the order of detention. When there is no mention about any bail application, then there is no presumption that the detenu would be granted bail. If that be so, there is no imminent possibility of the detenu coming out on bail. 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. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind. In support of his contention that the expression in explicit terms about the imminent possibility of the detenu coming out on bail should be there in the order of detention and the absence would vitiate the order of detention, he relies on the judgments of the Hon'ble Apex Court reported in [a] 2006 [1] MLJ [Cr1.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] ; [b]2005 [1] CTC 577 [VELMURUGAN @ VELU Vs. THE COMMISSIONER OF POLICE] and [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR].

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 for both sides with regard to the facts and citation.

6.As could be seen from paragraph 5 of the grounds of detention, the detenu is in remand in the ground case in Cr.No.244/2015 registered by Bhavani Police Station for the offence under Sections 8(c), 20(b)(ii)(B) Narcotic Drug and Psychotropic Substances Act and that there is no reference about any bail application filed by the detenu as on the date of passing of the detention order. As evidenced from the above ground, the Detaining Authority also has not stated specifically that there is an "IMMINENT POSSIBILITY" or "REAL POSSIBILITY" of the detenu coming out on bail, if he filed any bail application. This would show that the Detaining Authority passed the order of detention mechanically and without application of mind and the facts do not justify the detention. Moreover, the expression, in explicit terms about the imminent possibility of the detenu coming out on bail is absent. If that be so, the absence of the said expression would certainly vitiate the order of detention as held in 2005 [1] CTC 577 [cited supra]. Therefore, the subjective satisfaction arrived at by the detaining authority that the recourse to normal criminal law will not have the desired effect to effectively preventing her from indulging in such activities, which are prejudicial to the maintenance of public order and public health, would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Therefore, the impugned order is passed on mere Ipse-dixit and the order of detention cannot be sustained in the eye of law.

7.In this connection it is useful to refer the judgment of the Hon'ble Apex Court relied on by the learned counsel for the petitioner.

[a]In 2006 [1] MLJ [Cr1.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] , wherein the Hon'ble Apex Court has held as follows:

"The Courts had rejected the bail applications moved by the appellant and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is mere ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on

bail. 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 detention."

[b]In 2005 (1) CTC 577 (Velmurugan @ Velu vs. The Commissioner of Police), it has been held by the Division Bench of this Court as follows:

"3.It is settled law as laid down by the Supreme Court in the decisions Kamarunnisa V. Union of India, 1991 [1] SCC 128 : 1991 SCC [Cri.] 88 and Rivadeneyta Ricardo Augustin V. Government of Delhi, 1994 Supp. [1] SCC 597 : 1994 SCC [Cri.] 354 ; that unless there is a clear expression by the detaining authority in the grounds of detention with reference to the imminent possibility of the detenu being released on bail by filing bail application, the detaining authority would not choose to pass the detention order. In order to prevent the detenu from committing the acts, which would be disturbance to public order and public health, the detaining authority shall consider the materials and on the basis of subjective satisfaction that there is imminent possibility of the detenu coming out on bail or likelihood of the detenu being released on bail, the detaining authority may pass such an order under Tamil Nadu Act 14 of 1982. When such an essential requirement, namely, the imminent possibility of the detenu coming out on bail, is absent, it has to be held that the order of detention is vitiated.

4.On going through the relevant paragraph of the grounds of detention, we only notice that there is a mere reference of the possibility of the detenu coming out on bail. Admittedly, the expression, in explicit terms about the imminent possibility of the detenu coming out on bail, is absent. In the absence of such expression in the grounds of detention, we are to conclude that the impugned order of detention is liable to be set aside."

[c]In 2012 [7] SCC 181 [cited supra] which reads thus:-
12. In Rekha v. State of Tamil Nadu through
Secretary to Govt. & Anr., (2011) 5 SCC 244,
this Court while dealing with the issue held :

".....

In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.....

In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground."

(emphasis supplied)

Thus, it is evident from the aforesaid judgment that it is not the similar case,

i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

14. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law."

8. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

9. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent 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

vga

To

1.The Secretary to the
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Collector and
the District Magistrate,
Erode District, Erode.

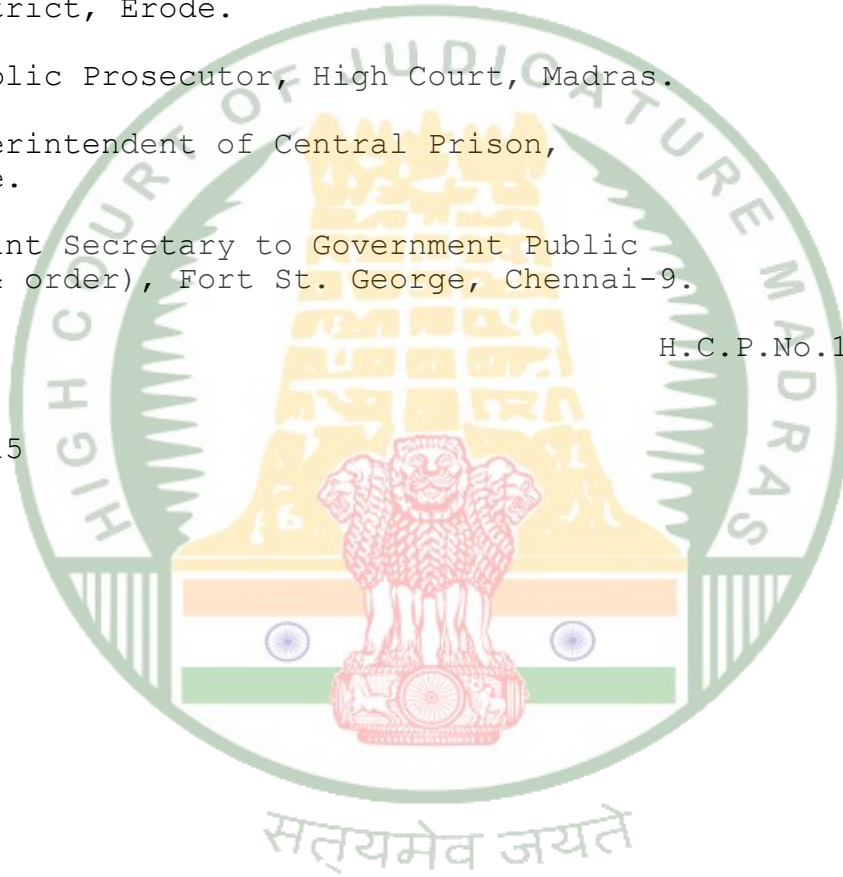
3. The Public Prosecutor, High Court, Madras.

4.The Superintendent of Central Prison,
Coimbatore.

5. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai-9.

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