

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.175/2015

Kalaivanan

...Petitioner

Vs

1.State of Tamilnadu,
rep. 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

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the records pertaining to the detention order passed in Memo No.2224/BCDFGISSSV/2014 dated 18.12.2014 on the file of the second respondent herein and to set aside the same and to direct the respondents herein to produce the detenu Magesh @ Magi, S/o.Munusamy, aged about 29 years, who is confined in Central Prison, Vellore, before this Court and to set him at liberty.

For Petitioner : Mr.G.B.Motcham

For Respondents : Mr.M.Maharaja, APP

ORDER

(Order of the Court was made by S.TAMILVANAN,J.)

Challenge is made to the order of detention passed by the second respondent vide Proceedings Memo No.2224/BCDFGISSSV/ 2014 dated 18.12.2014 whereby the detenu/the brother of the petitioner herein, by name, Magesh @ Magi, S/o.Munusamy, aged about 29 years, was ordered to be detained under the provisions of the 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 "GOONDA".

2.Though many grounds have been raised in the petition, Mr.G.B.Motcham, 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 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.

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 application in similar case, referred to in the grounds of detention was 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 case, the accused Ditchi Muthu @ Muthu was released on bail by the learned Principal Sessions Judge, Chennai in CrI.MP.No.6051/2014 in respect of the case in Cr.No.288/2014 for the offence u/s.341, 294[b], 324, 323, 307, 336 & 506[iii] IPC on the file of H-6 Dr.R.K.Nagar Police Station. 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 application in similar case and only the respective bail order was furnished to the detenu in page Nos.235 to 241 [in English version and in Vernacular version] in the Booklet placed before us. The said bail application filed in similar case 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 application in similar case 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.

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 application in similar case 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 application in similar case, 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(J)

//True Copy//

Sub Assistant Registrar

vga

To

1.State of Tamilnadu,
rep. 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.

3.The Public Prosecutor,
High Court, Chennai.

4.The Superintendent of Central Prison,
Vellore.
(In Duplicate for communication to detenue)

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

HCP.No.175/2015

TS (CO)
PSI (05.08.2015)



WEB COPY