

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2015

CORAM

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

H.C.P.No.1755 of 2015

M.Reka

W/o.Mohan @ Mohankumar

...Petitioner

vs.

1. The State of Tamil Nadu
represented by the
Secretary to Government,
Prohibition and Excise Department,
Chennai - 600 009.

2. The Commissioner of Police,
Chennai Police,
Chennai - 600 008.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the records pertaining to detention order passed by second respondent in Memo No.473/BDFGISSSV/2015 dated 20.06.2015 against the detenu Mohan @ Mohan Kumar, S/o.Nallathambi, aged 30, quash the same and consequently, direct the respondents to produce the detenu, who is confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.B.Sundarapandian

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

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

Petitioner is the wife of the detenu Mohan Kumar @ Mohan, S/o.Nallathambi, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of second respondent passed in Memo No.473/BCDFGISSSV/2015 dated 20.06.2015. Such order is under challenge herein.

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

S1 No.	Name of the Police station and Crime No.	Section of law
1.	T-4 Maduravoyal Police Station, Crime No.827 of 2014	379 IPC
2.	T-4 Maduravoyal Police Station, Crime No.1214 of 2014	379 IPC
3.	T-4 Maduravoyal Police Station, Crime No.2341 of 2014	379 IPC
4.	T-4 Maduravoyal Police Station, Crime No.2342 of 2014	379 IPC
5.	T-4 Maduravoyal Police Station, Crime No.2343 of 2014	379 IPC
6.	T-4 Maduravoyal Police Station, Crime No.19 of 2015	379 IPC
7.	T-4 Maduravoyal Police Station, Crime No.448 of 2015	379 IPC
8.	T-4 Maduravoyal Police Station, Crime No.498 of 2015	379 IPC
9.	T-4 Maduravoyal Police Station, Crime No.559 of 2015	379 IPC

Sl No.	Name of the Police station and Crime No.	Section of law
10.	T-4 Maduravoyal Police Station, Crime No.620 of 2015	379 IPC

The ground case has been registered against the detenu in Crime No.622 of 2015 on the file of T-4 Maduravoyal Police Station for offences under Sections 341, 294(b), 336, 427, 397 and 506(ii) IPC.

3. Though many grounds have been raised in the petition, learned counsel for 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, 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 learned counsel on either side and perused the entire materials available on record.

6. It is seen from paragraph 4 of the Grounds of Detention that in similar case, viz., bail was granted to the accused by this Court in Crl.O.P.No.1527 of 2015 in respect of the case in Crime No.805 of 2014 for offences u/s.341, 294(b), 336, 427, 392, 397 and 506(ii) IPC on the file of T-8 Muthapudupet 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 similar case; but the bail order of the said similar case [both in English version and in vernacular version] has been furnished in the Booklet. The said bail application filed in similar case was the document relied upon

by the Detaining Authority to come to the 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 similar 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.

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

The detention order passed by second respondent, detaining the detenu Mohan Kumar @ Mohan, S/o.Nallathambi, aged about 30 years, made in Memo No.473/BCDFGISSSV/2015 dated 20.06.2015, 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/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Prohibition and Excise Department,
Chennai - 600 009.
2. The Commissioner of Police,
Chennai Police,
Chennai - 600 008.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison,
Puzhal, Chennai.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

H.C.P.No.1755 of 2015

SVI [CO]
PSI 05.11.2015