

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2015

CORAM

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

H.C.P. No.1858 of 2015

Murugan

... Petitioner

Vs.

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

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus, to call for the records of the detention made in Memo No.1900/B.C.D.F.G.I.S.S.S.V./2014 dated 19.11.2014 passed by the Commissioner of Police, Chennai Police, Egmore, Chennai, the second respondent herein and set aside the same and direct the respondents to produce detenu, Murugan, son of Dinakaran, aged 37 years now confined in Central Prison, Puzhal-II, Chennai before this Court and set the detenu Murugan at liberty.

For Petitioner : Mr.R.Balakrishnan

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

O R D E R

[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.1900/B.C.D.F.G.I.S.S.S.V./2014 dated 19.11.2014 whereby the detenu, by name, Murugan, son of Dinakaran, aged about 37 years, was

ordered to be detained under the provisions of the Tamilnadu 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 Piracy Act 1982 [Tamilnadu Act 14 of 1982] branding him as a "GOONDA".

2. Though many grounds have been raised in the petition, Mr.R.Balakrishnan, 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 V Metropolitan Magistrate, Egmore, Chennai in Crl.MP.Nos.1258 and 1365 of 2012 in respect of the case in Crime No.1041 of 2011 for the offences under Sections 457 and 380 IPC on the file of P-3 Vysarpadi Police Station, Chennai and by the learned Judicial Magistrate No.II, Poonamallee in Crl.M.P. No.8172 of 2012 in respect of the case in Crime No.1677/2012 for the offences under Section 379 IPC on the file of T-6 Avadi 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 applications in similar cases and only the respective bail orders were furnished to the detenu in page Nos.169 to 171 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.

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//

sri

Sub Assistant Registrar

To

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Police,
Chennai Police,
Egmore, Chennai - 600 008
3. The Superintendent,
Central Prison, Puzhal - II, Chennai.
4. The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Balakrishnan, Advocate, S.R.No.52007

H.C.P. No.1858 of 2015

LRS (CO)
CA(09/10/2015)

WEB COPY