

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR. JUSTICE P.N.PRAKASH

H.C.P.No.2102 of 2015

G.Siva

... Petitioner

Vs.

1. The Principal Secretary to Government
Home, Prohibition & Excise [IX] Department
Secretariat, Fort St George, Chennai 600 009.
 2. The District Collector & District Magistrate
O/o.The District Collector & District Magistrate
Coimbatore District.
 3. The Director General of Police
O/o.The Director General of Police
Mylapore, Chennai 600 004.
- Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the entire records connected with the detention order of the 2nd respondent in Cr.MP.No.05/G/2015/E1 dated 02.02.2015 and quash the same and direct the respondents to produce the detenu namely G.Siva, son of Govindasamy aged about 34 years detained in Coimbatore Central Prison before this Court and set him at liberty forthwith.

For Petitioner : Mr.N.Sakthivel

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

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in Cr.MP.No.05/G/2015/E1 dated 02.02.2015 whereby the detenu/the brother of the petitioner, by name, G.Siva, son of Govindasamy aged about 34 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.N.Sakthivel, 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 [Cr.No.727/2014] and in the 4th adverse case [Cr.No.700/2014] registered by Thudiyalur Police Station and he was granted bail in the 4th adverse case by the learned Judicial Magistrate No.1, Coimbatore on 08.01.2015 in CrI.MP.No.6371/2014 and he has not moved any bail application in the ground case as on the date of the passing of the detention order. But the detaining authority has merely stated that "Further the recourse to the normal criminal law will not have the desired effect to prevent him from indulging in such activities, which are prejudicial to the maintenance of public order and public peace". He has not specifically stated that there is a "REAL POSSIBILITY" or "IMMINENT POSSIBILITY" of the detenu coming out on bail in the ground case. He adds that absence of the said expression in the grounds of detention would vitiate the order of detention. The learned counsel would add that admittedly, in this case, no bail application has been filed by the detenu in the above said case. When no bail application is filed, then there is no real possibility that the detenu would be released on bail. If that be so, there is no imminent possibility of the detenu coming out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu would likely to get bail in the ground case. 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 evidenced from paragraph 5 of the Grounds of Detention, the detenu has not moved any bail application in the ground case as on the date of passing of the detention order and though he has been granted bail in the 4th adverse case as early as on 08.01.2015, it is not known as to whether the detenu has furnished the sureties and availed bail. Also, as evidenced from the above ground, the Detaining Authority has not stated specifically that there is an "IMMINENT POSSIBILITY" or "REAL POSSIBILITY" of the detenu coming out on bail. The Detaining Authority has also not stated whether the detenu has filed any bail application in the said case or whether he is on bail as on that date. 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 if the detenu is released on bail, he

will indulge in similar activities that are prejudicial to the maintenance of public order, 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."

[emphasis supplied]

[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 :

".....

..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.....

14..... 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 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 view of the above decision rendered by the Division Bench of this Court, this Court is of the view that the detention order is unsustainable in law on the ground of inordinate and unexplained delay in passing the detention order and the same is liable to be set aside.

10.Accordingly, the Habeas Corpus Petition is allowed and 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 IV)

//True Copy//

Sub Assistant Registrar

AP
To

1. The Principal Secretary to Government
Home, Prohibition & Excise [IX] Department
Secretariat, Fort St George, Chennai 600 009.

2. The District Collector & District Magistrate
O/o.The District Collector & District Magistrate
Coimbatore District.
3. The Director General of Police
O/o.The Director General of Police
Mylapore, Chennai 600 004.
4. The Public Prosecutor,
High Court, Madras.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

+1cc to Mr.N.Sakthivel, Advocate, S.R.No.69009

AK(CO)
CA(19/01/2016)

H.C.P.No.2102 of 2015



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