

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.2150/2015

Shyamala

..

Petitioner

Vs.

1.The Principal Secretary
Government of Tamilnadu
Home, Prohibition & Excise
[XVI] Department, Fort St George
Chennai 600 009.

2.The Commissioner of Police
Chennai City.

..

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records in Memo No.291/BDFGISSV/2015 dated 06.04.2015 on the file of the 2nd respondent herein and quash the same and direct the respondents herein to produce the body of the petitioner's brother Kamalakannan, aged 25 years, son of Varadha Gounder now confined in Central Prison, Puzhal, Chennai-66 before this Court and set him at liberty.

For Petitioner : Mr.A.Vijayasankar

For respondents : Mr.M.Maharaja, APP

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 Memo No.291/BDFGISSV/2015 dated 06.04.2015, whereby the detenu/petitioner's brother, viz., Kamalakannan, aged 25 years, son of Varadha Gounder, 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 "GOONDA".

2.Though many grounds have been raised in the petition, Mr.A.Vijayasankar, 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.Learned counsel appearing for the petitioner submitted that the detenu was arrested in the ground case in Cr.No.240/2015 and was also arrested in all the three adverse cases [Cr.Nos.151/2015, 207/2015, 221/2015] by way of formal arrest. It is his further submission that the detenu was granted bail in the ground case ; but he has not furnished the sureties and that the bail applications filed in the adverse cases before the learned Judicial Magistrate NO.II, Poonamallee in CrI.MP.Nos.1223/2015, 1224/2015 and 12225/2015 were pending as on the date of passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the adverse cases by relying upon a similar case registered by T6 Avadi Police Station Cr.NO.1677/2012 for the alleged offence u/s.379 IPC, wherein bail was granted to an accused by the very same learned Magistrate in CrI.MP.No.8172/2012. Learned counsel submitted that the offence committed by the accused in the similar case is under section 379 IPC whereas the offence committed by the detenu in the 4th adverse case is under section 392 IPC and that this is indicative of non-application of mind on the part of the Detaining Authority as the offences are not the same so as to arrive at the subjective satisfaction. It is his further submission that the said similar case is also not that of the co-accused of the detenu and in support of such contention, reliance was placed on the judgment of this Court in Rekha Vs. State of Tamil Nadu through Secretary to Govt. & Anr., reported in (2011) 5 SCC 244 and the judgment reported in 2013 [1] LW (CrI.) 460 [LAKSHMI BAI NAT VS. THE SECRETARY TO THE GOVERNMENT, HOME, PROHIBITION AND EXCISE DEPT., FORT ST.GEORGE, CHENNAI-9 AND ANOTHER]. Hence, the learned counsel prays for quashing of the detention order.

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 the Grounds of Detention furnished before us, it is crystal clear that the Detaining Authority has arrived at the subjective satisfaction that the detenu would be

granted bail in the adverse cases in Cr.Nos.151/2015, 201/2015 and 221/2015 [as the bail applications are pending before the Court concerned], by placing reliance on a similar case wherein bail was granted to the accused by the Court concerned for the alleged commission of the offence u/s.379 IPC. In the case on hand, the offence committed by the detenu in the 4th adverse case is under section 392 IPC and that the Detaining Authority has not applied his mind in arriving at the subjective satisfaction. It is worth pointing out that whenever a similar case is referred to, to arrive at a subjective satisfaction, either the particulars of the similar case should be identical as that of the ground case or the adverse cases or the said similar case should be that of the co-accused of the detenu, which is not so in the case on hand. Further, unless, the similar cases referred to by the Detaining Authority, in the grounds of detention, are comparable with the cases relating to the detenu, in all aspects, it would not be open to the Detaining Authority to arrive at his conclusion that the detenu would be enlarged on bail.

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 *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."

[d] In the judgment reported in 2013 [1] LW (Cr1.) 460 [CITED SUPRA], the Division Bench of this Court at Madurai has held as follows:-

4. In this regard, the learned counsel for the petitioner would rely on the Judgment of a Division Bench of this Court in Jother vs. The Secretary to Government, reported in 2012 (2) LW (Cr1.) 527, wherein, in identical circumstances, in Paragraph No.17, the Division Bench has held as follows:

"17.Further, unless, the similar cases referred to by the Detaining Authority, in the grounds of detention, are comparable with the cases relating to the detenu, in all aspects, it would not be open to the Detaining Authority to arrive at his conclusion that the detenu would be enlarged on bail."

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 decisions rendered by the Division Bench of this Court, this Court is of the view that the detention order is vitiated on the above ground warranting interference.

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/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

AP

To

1.The Principal Secretary
Government of Tamilnadu
Home, Prohibition & Excise
[XVI] Department, Fort St George
Chennai 600 009.

2.The Commissioner of Police
Chennai City.

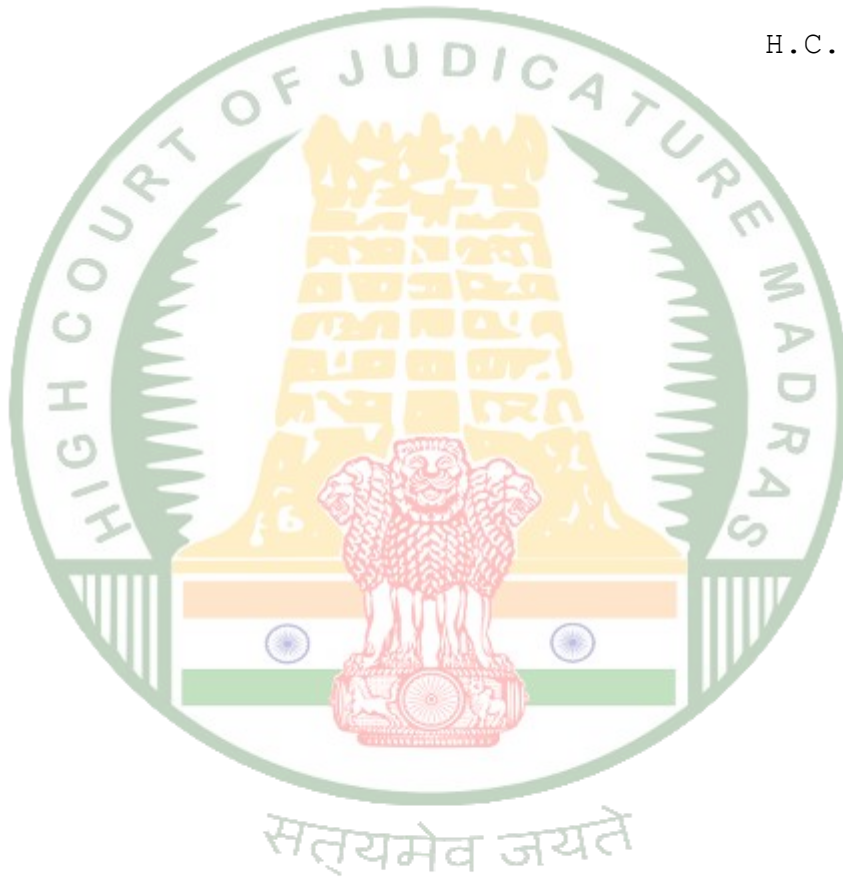
3. The Superintendent
Central Prison, Puzhal,
Chennai

4. The Joint Secretary to Government
Public (Law and order) Department
Fort Saint George,
Chennai

5. The Public Prosecutor, High Court, Madras.

H.C.P.No.2150/2015

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