

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

H.C.P.No.228 of 2015

Vellaisamy

..Petitioner

Vs

1.State of Tamilnadu

rep. by its The Secretary to the Government,
Home, Prohibition & Excise Department,
Fort St. George, Chennai 600009

2.The District Collector and District Magistrate,
Coimbatore District, Coimbatore.

..Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India directing the respondents to produce the petitioner's son by name, Mahendran, son of Vellaisamy, aged 22 years, before this Hon'ble Court now confined in Central Prison, Coimbatore, set him at liberty and to call for the records pertaining to the order of detention passed in Cr.M.P.No.41/G/2014/EI dt. 16.09.2014 passed by the 2nd respondent and set aside the same.

For Petitioner : Mr.K.Thenrajan

For Respondents : Mr.C.Emalias
Additional Public Prosecutor .

ORDER

This Habeas Corpus Petition is filed, by the father of the detenu, namely, Mahendran, son of Vellaisamy, aged 22 years, to issue a Writ of Habeas Corpus, to call for the records, in Cr.M.P.No.41/G/2014/EI dt. 16.09.2014, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) 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 14/1982), branding him as a "Goonda", in the Central Prison, Coimbatore, to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. Though several grounds have been raised in this Habeas Corpus Petition, Mr.K.Thenrajan, 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 involved in three adverse cases (Cr.No.770/2013, Cr.No.317/2013 and Cr.No.212/2014) and one ground case (Cr.No.215/2014) and the detenu has moved bail application in one of the adverse case in Cr.No.212/2014 on the file of Perur Police Station, but he has not moved any bail application in the ground case, Crime No.215/2014. Though it is stated so in paragraph No.5 of the detention order, the Detaining Authority has arrived at a conclusion that there is real possibility of the detenu coming out on bail in Crime No.215/2014 on the file of Perur Police Station and such statement is baseless and unfounded which shows that the impugned detention order has been passed in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail in the ground case is a mere ipse dixit without any cogent materials. In support of his contention, 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] ; [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] and [d] 2008 [3] MLJ (Cr1.) 144 [S.ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER].

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 given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and also perused the impugned order of detention and the materials placed on record.

6. A perusal of the impugned detention order would go to show that in paragraph No.4 of the Grounds of detention, while referring to the ground case in Crime No.215/2014, that the detenu has not filed any bail application in the said case, however, the detaining authority has submitted that there is real possibility of the detenu coming out on bail. There is no mention in the detention order as to whether any steps were taken to move bail application in the said ground case. In the absence of any particulars in this regard and any material to show that the detenu is likely to come out on bail in the ground case, the subjective satisfaction arrived at by the detaining authority that there is real possibility of the detenu in coming out on bail, 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, on this ground, the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

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 as follows:

"3.....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 2080. 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."

[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....."

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."

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."

[d]In 2008 [3] MLJ (Cr1.) 144 [S.ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER], it has been held as follows:

"Where a bail application filed by the detenu was pending before the Court and the Detaining Authority coming to the conclusion that there was a real possibility of the detenu coming out on bail, even prior to the passing of an order on bail application, held the detention order was passed without proper application of mind, rendering it vitiated."

8. It is a 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 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

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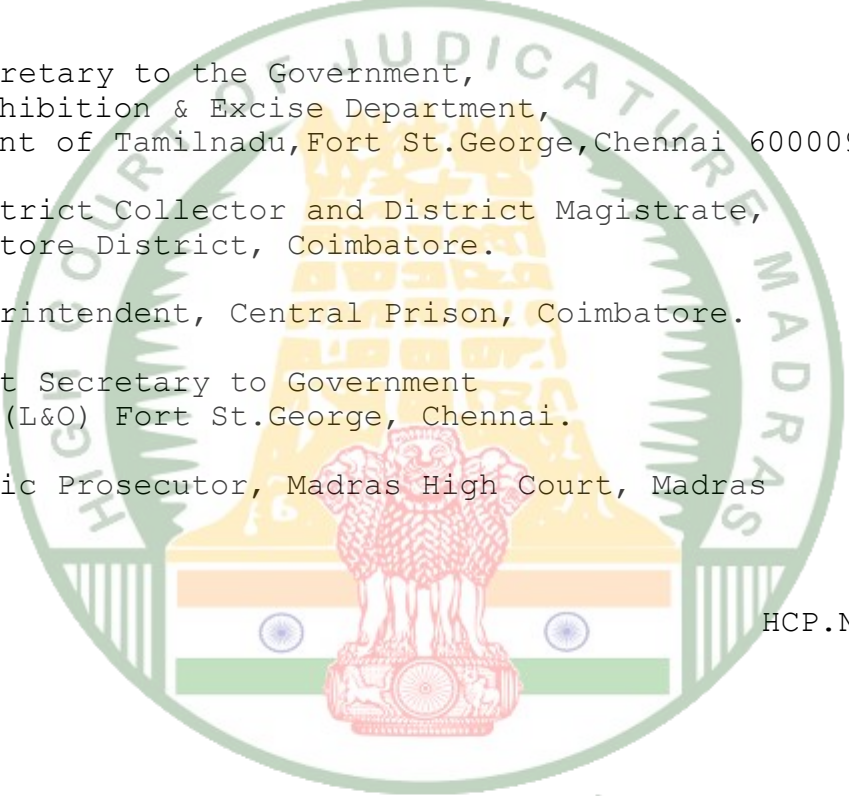
Sub Assistant Registrar

To

1. The Secretary to the Government,
Home, Prohibition & Excise Department,
Government of Tamilnadu, Fort St. George, Chennai 600009
2. The District Collector and District Magistrate,
Coimbatore District, Coimbatore.
3. The Superintendent, Central Prison, Coimbatore.
4. The Joint Secretary to Government
Public (L&O) Fort St. George, Chennai.
5. The Public Prosecutor, Madras High Court, Madras

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HCP.No.228 of 2015



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