

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

HCP.No.239 of 2015

Madhu @ Periya Madhu ..Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai 600 009.

2.The Executive Magistrate/
District Collector, Salem.

..Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to call for the records in connection with the order of detention passed by the second respondent dated 29.5.2014 in CMP.No.6/BLA/C2/2014 against the petitioner/detenu Madhu @ Periya Madhu S/o.Krishnan, aged about 38 years, who is confined at Salem Prison and set aside the same and direct the respondents to produce the detenu before this court and set the petitioner/detenu at liberty.

For Petitioner : Mr.M.Dhamodharan
For Respondents : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

This Habeas Corpus Petition is filed, by the detenu, namely, Madhu @ Periyamadhu, S/o Krishnan, male, aged 38 years, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.6/B.L.A/C2/2014 dated 29.05.2014, 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, Salem, and 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.M.Dhamodharan, learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail application filed in 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.

3. Per contra, Mr.C.Emalias, 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 was 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 4 of the Grounds of Detention that the detenu has not filed any bail petition so far in Kondalampatty PEW Cr.No.176 of 2014 registered for the offence under section 4(1)(a) and 4(1-A) of Tamil Nadu Prohibition Act. It is further stated therein that in a similar case registered in Kondalampatty PEW Crime No.540/2010 under sections 4(1)(a) and 4(1-A) of the Tamil Nadu Prohibition Act, the accused was released on bail by order dated 13.8.2010 made in CMP.No.1632/2010 on the file of the Principal Sessions Judge, Salem. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain the copy of the bail application filed in similar case. The said bail application filed in similar case was a document relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such a document has 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 application in similar case 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 a copy of the bail application to the detenu has the effect of vitiating the order of detention.

8. As already analysed by us, in the facts and circumstances of the present case, non-supply of the copy of the bail application filed in similar case 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

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai 600 009.

2.The Executive Magistrate/
District Collector, Salem.

3.The Superintendent, Central Prison, Salem

4.The Joint Secretary to Government,
Public(Law & Order)
Fort St.George, Chennai - 600 009.

5.The Public Prosecutor,
Madras High Court, Madras.

1 cc to Mr.M.Dhamodharan ,Advocate, SR.No.17031

pur(co)
pmk.17.4.2015

HCP.No.239/2015



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