IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.07.2015

CORAM:

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

H.C.P.No.437 of 2015

Murugan .. Petitioner

Vs

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

2.The Commissioner of Police
Chennai City. .. 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 01.12.2014 in BCDFGISSSV No.2041/ 2014 against the petitioner's son Thamizharasan, son of Murugan, aged about 24 years, who is confined in Central Prison, Puzhal II, Chennai and set side the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

(The 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 in BCDFGISSSV No.2041/ 2014 dated 01.12.2014, whereby the detenu/the son of the petitioner herein, by name, Thamizharasan, son of Murugan, aged about 24 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.S.Senthilvel, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-

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supply of copy of the bail application 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 order.

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 application in similar case, referred to in the grounds of detention 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 No.4 of the Grounds of Detention that in similar case, the accused was released on bail by the learned Principal Sessions Judge, Thiruvallur in Crl.M.P.No.2392/2012 for the offence under sections 341, 294(b), 336, 427, 392, 397 r/w 506[ii] IPC in Cr.No.1960/2012 on the file of T-1, Ambattur Police Station. On a perusal of the Paper Book furnished by the Prosecution, it is seen that only the bail order copy of similar case in page Nos. 189 to 191 has been furnished and it does not contain the copy of the said bail application in similar case. The said bail application filed in similar case was the 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 document has not been supplied to the detenu, as it does not form part of the Paper Book furnished by the Prosecution. Therefore, the 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

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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."

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 application in similar case 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 application 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 the 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/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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

2. The Commissioner of Police
   Chennai City.

3. The Joint Secretary to Government,
   Public (Law & Order), Fort Saint George,
   Chennai - 9.

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4. The Public Prosecutor,
   High Court, Chennai.

5. The Superintendent of Central Prison,
   Puzhal, Chennai.

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