



WEB COPY

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.49/2015

Ayyandurai @ Sappani @
Thikkuvayan @ Chinnapaiyan

...Petitioner

Vs

1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Salem City, Salem.

...Respondents

Prayer:- This Habeas Corpus Petition is filed, under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records of detention order made in CMP No.23/Goodas/Salem City/2014 dated 12.06.2014 passed by the Commissioner of Police, Salem City, Salem, the 2nd respondent herein against the petitioner / detenue Thiru.Ayyandurai @ Sappani @ Thikkuvayan @ Chinnapaiyan, S/o. Manickam, aged about 45 years, who is now confined at Central Prison, Salem and set aside the same and produce him.

For Petitioner : Mr.M.Sankar

For Respondents : Mr.C.Emalias, APP



ORDER

This Habeas Corpus Petition is filed, by the detenu, namely, Ayyandurai @ Sappani @ Thikkuvayan @ Chinnapaiyan, male, aged 45 years, son of Manickam, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.23/Goonda/Salem City/2014, dated 12.06.2014, 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) the Tamil Nadu Act 14 of 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 and person of the detenu and to set him at liberty forthwith.

2. Though several grounds have been raised in this Habeas Corpus Petition, Mr.M.Sankar, learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail applications filed in similar cases, 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 applications were 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 5 of the impugned detention order that in similar cases, the accused were granted bail vide order of the High Court dated 19.11.2012 in CrI.OP.No.25955/2012 in connection with Salem Town Crime Police Station Cr.No.246 of 2012 registered for the offences under sections 341, 392 r/w 397, 427 and 506(ii) IPC and by the Judicial Magistrate No.I, Salem on 29.10.2011 in connection with Salem Town Crime Police Station Cr.No.391/2011 registered under section 379 IPC. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain the copy of the said bail applications filed in



similar cases. The said bail applications filed in similar cases were the documents relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such documents have 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 applications in similar cases 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 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 applications filed in similar cases to the detenu has the effect of vitiating the impugned detention order. Further, due to non supply of such vital documents, 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(J)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai 600 009.
- 2.The Commissioner of Police,
Salem City, Salem.
- 3.The Public Prosecutor,
Madras High Court, Madras.
- 4.The Superintendent, Central Prison,
Salem.
- 5.The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

1 CC to Mr.M.Sankar, Advocate SR.No. 17299

HCP.No.49/2015

SSI (CO)
PSI (16.04.2015)