

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.534 of 2015

K.Venkatesan

..Petitioner/Brother of Detenu

Vs

1.The Secretary to the Government,
Home,Prohibition & Excise Department,
Secretariat, Chennai 600009

2.The Commissioner of Police,
Chennai Police, Office of the
Commissioner of Police, (Goondas Section)
Vepery, Chennai - 7.

..Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India calling for the entire records in connection with the order of detention passed by the second respondent dated 16.09.2014, Memo No.1264/BDFGISSV/2014, against the petitioner's brother, Arumugam, Son of Kannan, aged about 44 years, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.V.Paarthiban

For Respondents : Mr.C.Emalias

Additional Public Prosecutor .

ORDER

This Habeas Corpus Petition is filed, by the brother of the detenu, namely, Arumugam, Son of Kannan, aged about 44 years , to issue a Writ of Habeas Corpus, to call for the records, in Memo No.1264/BDFGISSV/2014 dated 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) the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", in the Central

Prison, Puzhal, Chennai, 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.V.Paarthiban, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail application, F.I.R., Charge sheet and other relevant particulars 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, 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 admitted that the copy of the bail applications and other relevant particulars in similar cases, referred to in the grounds of detention, 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 No.4 of the Grounds of Detention that in similar cases, the accused were released on bail by the 13th Metropolitan Magistrate Court, Egmore, Chennai in CrI.M.P.No.2997/2012 in respect of Crime No.442/2012 on the file of D-1, Triplicane Police Station, registered under sections 392 IPC and by the Court of Principal Sessions Judge in CrI.M.P.No.10988/2013 in respect of Crime No.1580/2013 on the file of F-3, Nungambakkam Police Station registered under Sections 341, 294 (b) 336, 427, 397 and 506(ii) IPC. On a perusal of the Paper Book furnished by the Prosecution, it is seen that in respect of Crime No.442/2012 in similar case, bail application was not furnished to the detenu and in respect of Crime No.1580/2013 in similar case, bail application, bail order, F.I.R., charge sheet etc. were not furnished to the detenu. The bail applications, F.I.R., Charge sheet etc. 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, the said documents have not been supplied to the detenu, as it did not form part of the Paper Book furnished by the Prosecution. Therefore, the non-supply of the copy of the bail applications and other relevant particulars 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 the copy of the bail application in similar case 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 applications and other relevant particulars in similar cases, 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.

vsi

-s/d-

Assistant Registrar()

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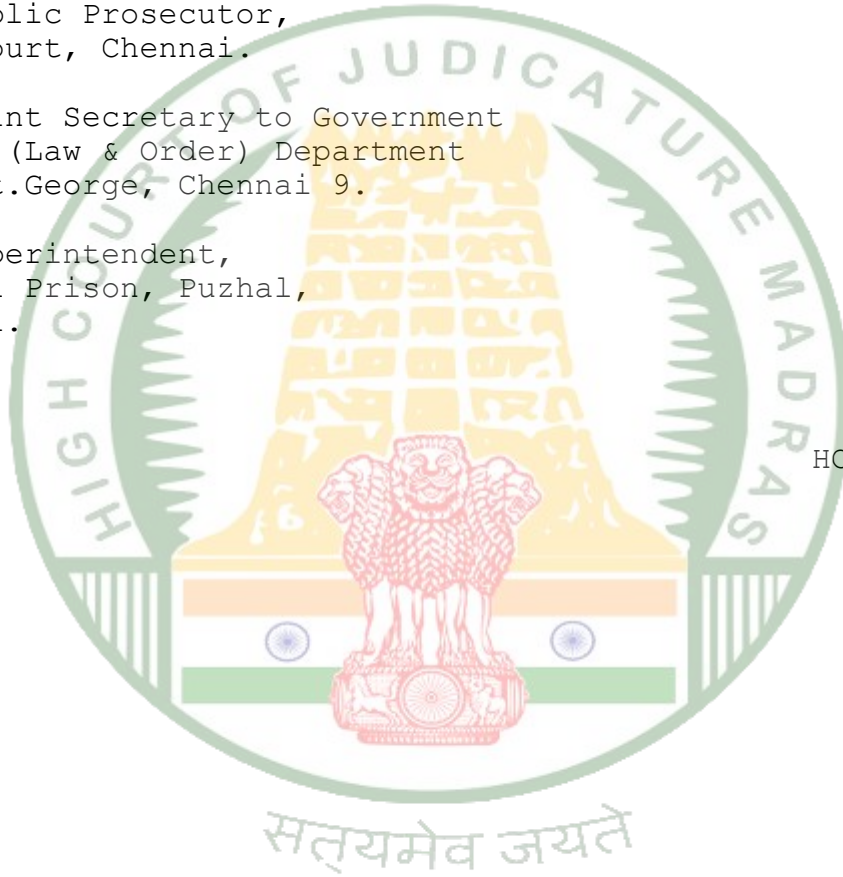
Sub-Assistant Registrar

To

1. The Secretary to the Government,
Home, Prohibition & Excise Department,
Government of Tamilnadu,
Fort St.George, Chennai 600009
2. The Commissioner of Police,
Chennai Police, Office of the
Commissioner of Police, (Goondas Section)
Vepery, Chennai - 7.
3. The Public Prosecutor,
High Court, Chennai.
4. The Joint Secretary to Government
Public (Law & Order) Department
Fort St.George, Chennai 9.
5. The Superintendent,
Central Prison, Puzhal,
Chennai.

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HCP.No.534 of 2015



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