

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

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

H.C.P.No.652 of 2015

S.Sulthan

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Petitioner

Vs.

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

2. The Commissioner of Police,
Chennai Police,
Office of the Commissioner of Police,
(Goondas section)

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Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in connection with the order of detention passed by the 2nd respondent dated 21.11.2014 in Memo No.1932/BDFGISSV/2014 against the petitioner's son, Sheik @ Sheik Maraikkayar, S/o Samsudeen, aged 33 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.Janarthanan

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor

O R D E R

[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 Memo No.1932/BDFGISSV/2014 dated 21.11.2014, whereby the detenu/the son of the petitioner herein, by name, Sheik @ Sheik Maraikkayar, S/o Samsudeen, aged 33 years, was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law

Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2. Though several grounds have been raised in this Habeas Corpus Petition, Mr.V.Janarthanan, 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 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.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, Chennai, in CrI.M.P.No.10992/2011 in Crime No.1640/2011 on the file of V-5, Thirumangalam Police Station for the offence under sections 294(b), 341, 336, 307, 397 and 506(ii) IPC. On a perusal of the Paper Book furnished by the Prosecution, it is seen from page No.81 that only the bail order copy of similar case was furnished in respect of Cr.No.1640/2011 and it does not contain the copy of the bail application 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 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 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 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 of the second respondent dated 21.11.2014, 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 Government
Home, Prohibition & Excise Department
Chennai 600 009.
2. The Commisioner of Police,
Chennai Police,
Office of the Commissioner of Police,
(Goondas section)
- 3.The Superintendent of Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government
Public (Law & Order)
Fort St.George, Chennai-9
- 5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.652 of 2015

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pmk.5.8.2015



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