

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN  
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.706 of 2015

Sal Sabeela  
W/o.B.Siddique Ali

.. Petitioner/wife of the  
detenu

vs.

1.The State represented by its  
Secretary to Government, Home,  
Prohibition and Excise Department,  
Fort St.George,  
Chennai - 600 009.

2.The Commissioner of Police,  
Coimbatore City,  
Coimbatore District.

.. Respondents

This Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records pertaining to the detention order passed by second respondent in C.No.05/G/IS/2015 on 28.02.2015 against the petitioner's husband viz., B.Siddique Ali, S/o.S.A.Basha, aged 32 years, quash the same and consequently to direct the respondents herein to produce the detenu, who is lodged at Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.C.D.Sugumar  
For Respondents : Mr.S.Shanmugavelayutham,  
Public Prosecutor

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

Petitioner is the wife of the detenu, who has been branded as a "Goonda" under the Tamil Nadu Act 14 of 1982 and detained under orders of the second respondent passed in C.No.05/G/IS/2015 dated 28.02.2015. Such order is under challenge herein.

2. The detenu came to adverse notice in the following cases:-

| Sl.No. | Police Station and Crime No.                                           | Sections of Law                                                |
|--------|------------------------------------------------------------------------|----------------------------------------------------------------|
| 1.     | Coimbatore City, Central Crime Branch, Crime No.99 of 2014             | 147, 364-A, 386, 451, 506 (ii) IPC                             |
| 2.     | Coimbatore City, B-4 Race Course Police Station, Crime No.1424 of 2014 | 147, 447, 365, 506(i) IPC @ 147, 447, 365, 386 and 506 (i) IPC |
| 3.     | Coimbatore City, B-4 Race Course Police Station, Crime No.1452 of 2014 | 147, 148, 294(b), 323, 342, 506(ii) and 386 IPC                |

The ground case has been registered against the detenu in Crime No.133 of 2015 on the file of B-9 Saravanampatty Police Station for offences under Sections 294(b), 323, 307 and 506(ii) IPC.

3. Learned counsel for petitioner submitted that the detaining authority subjectively has arrived at satisfaction that it was necessary to detain the detenu since bail has been granted to a person accused of offences similar to that in the ground case and therefore, there is imminent possibility of the detenu being released on bail. The detaining authority has relied on an order of bail passed in case registered in Crime No.263 of 2013 on the file of B-14 Kuniyamuthur Police Station, Coimbatore City, for offences u/s.294 (b), 332, 307 and 506(ii) IPC. Learned counsel submits that in the ground case viz., Crime No.133 of 2015 on the file of B-9 Saravanampatty Police Station, the detenu is accused of offences u/s.294(b), 323, 307 and 506(ii) IPC. It is the contention of learned counsel that dissimilar cases have been treated as similar by the detaining authority and the same reflects non-application of mind.

4. Mr.S.Shanmugavelayutham, learned Public Prosecutor, placing reliance on the following judgments, raised strong objections:

- (i)Huidrom Konungjao Singh v. State of Manipur and others [2012 (7) SCC 181];
- (ii)K.Thirupathi v. District Magistrate and District Collector, Tiruchirapalli District and another [2005 (4) CTC 497];
- (iii)Birendra Kumar Rai alias Virendra Kumar Rai v. Union of India and others [1993 (1) SCC 272];
- (iv)Veeramani v. State of Tamil Nadu [1994 (2) SCC 337];
- (v)Rekha v. State of Tamil Nadu and another [2011 (5) SCC 244];
- (vi)U.Vijayalakshmi (Mrs) v. State of Tamil Nadu and another [1995 SCC (Cri) 176]

5. We have considered the rival submissions.

6. We find merit in the submission of learned counsel for petitioner. Both in the ground case and in the case treated as similar offences u/s.294(b), 307 and 506(ii) IPC are alleged. However, the other offence alleged in the ground case is u/s.323 IPC while that in the case treated as similar is u/s.332 IPC. Section 323 IPC deals with punishment for voluntarily causing hurt whereas section 332 IPC deals with voluntarily causing hurt to public servant while discharging his duty or towards deterring him from doing so. It may well be argued that the detaining authority may have been influenced by the fact that since bail was granted in a case involving offence u/s.332 IPC, a larger offence, the imminent possibility of doing so in a case involving offence u/s.323 IPC, a lesser offence, is that much more. Such is a position which the detaining authority ought to have informed. Though we find the other judgments relied on by learned Public Prosecutor, not applicable in the facts of the present case, we are of the view that the judgment in U.Vijayalakshmi's case is to be explained. Paragraph 5 of such judgment reads as follows:

"5. Counsel for the detenu next contended that the second aspect of paragraph 4 shows that extraneous consideration weighed with the detaining authority in passing the impugned detention order. He submitted that it too remote to think that tribals resort to drinking, gambling and turn anti-socials merely because some extra money falls into their hands. Assuming without deciding that this contention is well-founded, we are of the opinion that Section 5-A of the Act takes care of it. Even if we were to hold that this ground is extraneous or irrelevant, that would not affect the validity of the detention order as Section 5-A was introduced precisely to take care of such a situation. We, therefore, do not see any merit in the second contention also."

Learned Public Prosecutor placed reliance on the above observations to inform that the grounds of detention are severable and contended that even if one of the grounds of detention justified the same, this Court would not interfere.

7. Section 5-A of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act (XIV of 1982), as explained in U.Vijayalakshmi's case, makes legitimate an order of detention even if one of the grounds therefor justified the same. The difference between the reasoning justifying an order of detention and the grounds upon which it is based is to be understood. The grounds

are, the incidents/cases in which the detenu has come to adverse notice, the last of such cases generally referred to as the 'ground case' while the reference to others is as 'adverse cases'. The incidents/cases in which the detenu has exhibited poor conduct form the grounds. It is owing thereto that the authorities consider it necessary to detain him. It is these that are severable. The grounds are to be distinguished from the reasoning informed by the detaining authority in justification of the detention order. Such reasoning must exhibit that subjective satisfaction of the detaining authority reasonably stands arrived at. When the detention order fails such test, the same is rendered invalid. We have herein above explained why the reasoning of the detaining authority in arriving at subjective satisfaction in passing an order of detention against the detenu is erroneous. To repeat, the reason informed by the detaining authority is that in a case similar to the ground case, the accused was released on bail and hence, there was imminent possibility of the detenu being so released. We have found the case treated to be similar, dissimilar.

This Habeas Corpus Petition is allowed. The impugned order passed by second respondent against the detenu B.Siddique Ali, S/o.S.A.Basha, aged 32 years, made in C.No.05/G/IS/2015 dated 28.02.2015, is quashed. The detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

-s/d-

Assistant Registrar(CIII)  
dt:28/09/2015

True Copy

Sub-Assistant Registrar

gm  
To

1.The Secretary to Government, Home,  
Prohibition and Excise Department,  
Fort St.George,  
Chennai - 600 009.

2.The Commissioner of Police,  
Coimbatore City,  
Coimbatore District.

3.The Public Prosecutor,  
High Court, Chennai.



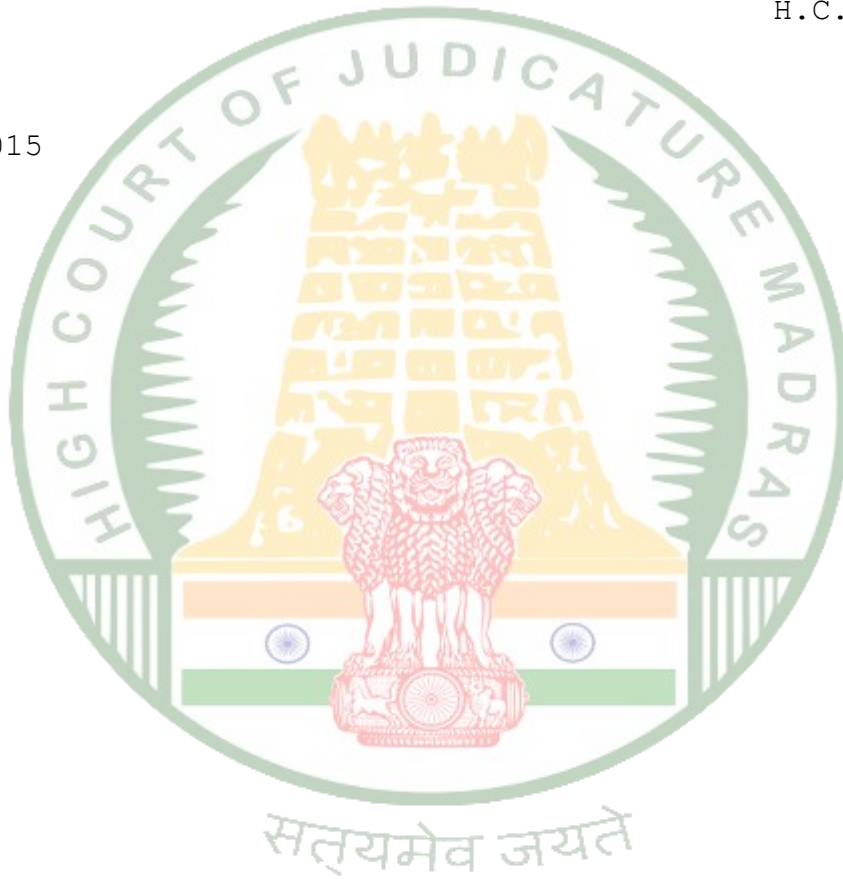
4.The Superintendent of Central Prison,  
Salem.

5.The Joint Secretary to Government  
Public Law and order  
Fort St.George Chennai-9

+1 cc to the Public Prosecutor high court Madras  
sr.40993

H.C.P.No.706 of 2015

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