

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2015

CORAM

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

H.C.P.No.746/2015

Mohan Raj

..

Petitioner

Vs

1.The District Collector & District Magistrate
Erode District, Erode.

2.The Principal Secretary to Government
Home, Prohibition & Excise Department
Chennai-09.

.. 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 CrI.MP.No.8/2014/C1 dated 12.06.2014 passed by the first respondent, set aside the same and direct the respondents to produce the detenu Mohanraj, aged 36 years, son of Dhandapani, who is now detained in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.V.K.R.Balakrishnan
For Respondents : Mr.M.Maharaja,APP

ORDER

[Order of the Court was made by S.TAMILVANAN, J.]

Challenge is made to the order of detention passed by the first respondent vide Proceedings in CrI.MP.No.8/2014/C1 dated 12.06.2014, whereby the detenu/the petitioner herein, 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. As per the grounds of detention dated 12.06.2014, passed by the first respondent, the detenu came to adverse notice in the following cases:

i) Adverse case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Erode District, Karungalpalayam PS Cr.No.507/2013	380 IPC
2	Erode District, Perundurai Police Station Cr.No.144/2014	419, 392 r/w 397 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	Erode District, Perundurai Police Station Cr.No.185/2014	397 IPC

3. Though many grounds have been raised in the petition, Mr.V.K.R.Balakrishnan, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the 2nd adverse case [Cr.No.144/2014] and also in the ground case in Cr.No.185/2014 registered by Perundurai Police Station and the detenu has not moved any bail applications in the said cases as on the date of the passing of the detention order. The Detaining Authority has not mentioned about any sufficient materials to arrive at the conclusion that the detenu would be granted bail in the above said cases. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail applications in 2nd adverse case as well as in the ground case. When no bail application is filed, there is no real possibility of the detenu coming out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case and in the 2nd adverse case and there is no imminent possibility of the detenu coming out on bail in the said cases. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail in the 2nd adverse case and in the ground case, is a mere ipse dixit without any cogent materials. In support of his contention, he relies on the judgments of the Hon'ble Apex Court reported in [a] 2006 [1] MLJ [Cr1.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] ; [b] 2005 [1] CTC 577 [VELMURUGAN @ VELU Vs. THE COMMISSIONER OF POLICE] and [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] .

5.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6.We have heard the learned counsel for both sides with regard to the facts and citation.

7.As could be seen from paragraph 5 of the Grounds of detention, the detenu is in remand in the ground case [Cr.No.185/2014] and in the 2nd adverse case [Cr.No.144/2014] and he has not filed any bail applications in the said 2nd adverse case as well as in the ground case as on the date of passing of the detention order. The Detaining Authority has not even stated whether the relatives of the detenu are taking steps to take the detenu on bail by filing any bail applications in the said cases. When no bail application is filed, there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail in the ground case as well as in the 2nd adverse case would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Therefore on this ground alone the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

8.In this connection it is useful to refer the judgment of the Hon'ble Apex Court relied on by the learned counsel for the petitioner.

[a]In 2006 [1] MLJ [Cr1.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] , wherein the Hon'ble Apex Court has held as follows:

"The Courts had rejected the bail applications moved by the appellant and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is mere ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record, in the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention."

[b]In 2005 (1) CTC 577 (Velmurugan @ Velu vs. The Commissioner of Police), it has been held as follows:

"3.....unless there is a clear expression by the detaining authority in the grounds of detention with reference to the imminent possibility of the detenu being released on bail by filing bail application, the detaining authority would not choose to pass the detention order. In order to prevent the detenu from committing the acts, which would be disturbance to public order and public health, the detaining authority shall consider the materials and on the basis of subjective satisfaction that there is imminent possibility of the detenu coming out on bail or likelihood of the detenu being released on bail, the detaining authority may pass such an order under Tamil Nadu Act 14 of 1982. When such an essential requirement, namely, the imminent possibility of the detenu coming out on bail, is absent, it has to be held that the order of detention is vitiated."

[c]In 2012 [7] SCC 181 [cited supra] which reads thus:-
12. In Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr., (2011) 5 SCC 244, this Court while dealing with the issue held :

".....

..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.....

In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground."

14..... Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in

the grounds of detention and cannot be sustained in the eyes of law."

(emphasis supplied)

9.It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

10.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

11.Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the first respondent 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

To

- 1.The District Collector & District Magistrate
Erode District, Erode.
 - 2.The Principal Secretary to Government
Home, Prohibition & Excise Department
Chennai-09.
 - 3.The Public Prosecutor, High Court, Madras.
 - 4.The Superintendent of Central Prison, Coimbatore.
 - 5.The Joint secretary to Government of Tamilnadu,
Public (L&O) Fort st.George, Chennai.
- +1 cc to Mr.VKR.Balakrishnan, Advocate,SR.25676.

Lrs (co)
krd 11/6

H.C.P.No.746/2015