

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2015

C O R A M

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

H.C.P.No.778 of 2015

Eqbalbee

... Petitioner

Vs

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition and Excise Department (Home),
Secretariat,
Chennai 600 009.

2.The Commissioner of Police,
Chennai City,
Egmore, Chennai 600 008.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to call for the records relating to the order passed by the second respondent in No.2098/BDFGISSV/2014, dated 07.12.2014 and set aside the same and produce the detenu viz., Thiru Ghouse Basha, son of Sabeer Ahamed, aged about 32 years now confined at Central Prison II, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.S.Elankumaran

For Respondents: Mr.M.Maharaja
Addl. 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 in BDFGISSSV No.2908/2014, dated 07.12.2014, whereby the detenu/the son of the petitioner herein, by name, Thiru Ghouse Basha, Son of Sabeer Ahamed, male, aged about 32 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, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2.Though many grounds have been raised in the petition, Mr.S.Elankumaran, learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail petitions and bail order in the 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 have 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 bail petitions and bail order in the 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 was granted bail by the V Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.Nos.1259 and 1364 of 2012 in respect of Cr.No.1062/2011 for the offence registered under sections 457 and 380 IPC on the file of P-3 Vyasarpadi Police Station and by the XVII Metropolitan Magistrate Court, in Crl.M.P.No.593 of 2013 in respect of Cr.No.26/2009 for the offence registered under sections 379 IPC on the file of R-1, Mambalam Police Station and by the Principal Sessions Judge, Chennai in Crl.M.P.No.929 of 2013 in respect of Cr.No.160/2013 for the offence registered under sections 341, 294(b), 336, 427, 379 and 506 (ii)IPC on the file of V-5, Thirumangalam Police Station. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain any of the document, viz., the bail petitions namely, in Crl.M.P.Nos.1259 and 1364 of 2012 in respect of Cr.No.1062/2011 and Crl.M.P.No.929 of 2013 in respect of Cr.No.160/2013 and bail petition and bail order namely, in Crl.M.P.No.593 of 2013 in respect of Cr.No.26/2009. The said bail petitions and the bail orders 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 they did not form part of the Paper Book furnished by the Prosecution. Therefore, the non-supply of the copy of the bail petitions and the bail order and other documents 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 applications 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 petitions and bail order in similar cases 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 documents, viz., the bail petitions and the bail order in similar case 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 his 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

True Copy

Sub Assistant Registrar

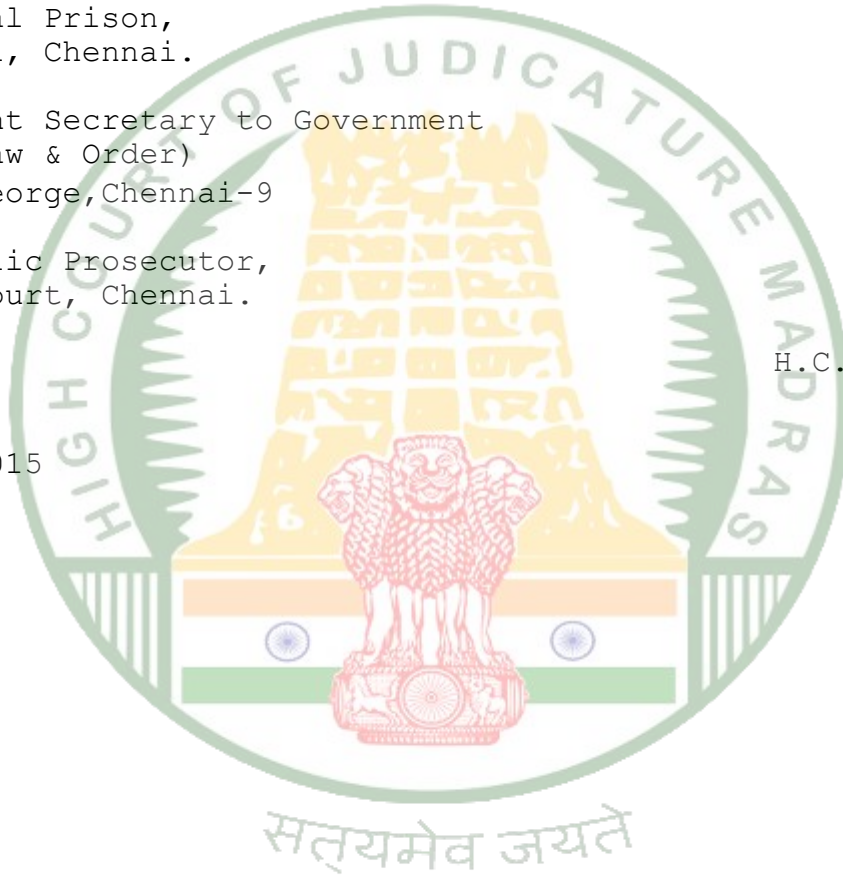
cla/msk

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Prohibition and Excise Department (Home),
Secretariat,
Chennai 600 009.
- 2.The Commissioner of Police,
Chennai City,
Egmore, Chennai 600 008.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
- 4.The Joint Secretary to Government
Public (Law & Order)
Fort St.George, Chennai-9
- 5.The Public Prosecutor,
High Court, Chennai.

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gj (co)
pmk.7.8.2015



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