IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2015

C O R A M

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

H.C.P.No.832 of 2015

Priya ... Petitioner

Vs

1. State of Tamil Nadu rep. by its
   Principal Secretary to Government,
   Home, Prohibition and Excise
   Department, Secretariat,
   Chennai - 9.

2. The District Magistrate and
   District Collector,
   Tiruvallur District, Tiruvallur. ... 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 of detention passed by the second respondent dated 25.02.2015 in BCDFGISSSV No.2/2015, quash the same and direct the respondents to produce the body of the detenue Kavitha, female, aged 38 years, wife of Simsan, now detained at Women Special Prison, Puzhal, Chennai - 66 before this Court and set her at liberty.

For Petitioner : Mr.V.Elangovan

For Respondents : Mr.M.Maharaja
Additional Public Prosecutor

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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 BCDFGISSSV No.2/2015, dated 25.02.2015, whereby the detenue/mother of the petitioner herein, by name, Kavitha, wife of Simsan, male, aged about 38 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 her as a "BOOTLEGGER".

2.Though many grounds have been raised in the petition, Mr.V.Elangovan, 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 the similar case, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detenue 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 bail application in the similar case, referred to in the grounds of detention was not supplied to the detenue.

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.5 of the Grounds of Detention that in similar case, the accused was granted bail by the Principal District and Sessions Court in Crl.M.P.No.487/2015 in respect of Crime No.83/2015 for the offence registered under Section 4(1)(a) (i) r/w 4(1-A) of T.N.P. Act on the file of Periyapalayam PEW Unit. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain any of the documents, viz., the bail application, in respect of the similar case. The said bail

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application filed in similar case was the document relied upon by the Detaining Authority to come to a subjective satisfaction that the detenue was likely to be released on bail. Admittedly, such document has not been supplied to the detenue, as it did not form part of the Paper Book furnished by the Prosecution. Therefore, the non-supply of the copy of the bail application and other documents in similar case to the detenue 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 application in similar case to the detenu has the effect of vitiating the order or detention.

8.As already analysed by us, in the facts and circumstances of the present case, non-supply of the document, viz., bail application in similar case to the detenue has the effect of vitiating the impugned detention order. Further, due to non-supply of such vital documents, the detenue has lost valuable right to make an effective representation to the authorities concerned.

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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 detenue is directed to be released forthwith, unless her presence is required in connection with any other case.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Principal Secretary to Government,
   Home, Prohibition and Excise
   Department, Secretariat,
   Chennai - 9.

2. The District Magistrate and
   District Collector,
   Tiruvallur District, Tiruvallur.

3. The Superintendent,
   Special Prison for Women,
   Puzhal, Chennai - 66.

4. The Joint Secretary to Government,
   Public(Law & Order),
   Fort Saint George, Chennai - 9.

5. The Public Prosecutor,
   High Court, Chennai.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.37395

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