

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.06.2015

CORAM:

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

H.C.P.No.870 of 2015

S.Soorya Begam

... Petitioner

Vs

1. State of Tamil Nadu,
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George, Chennai 600 009.

2. The Commissioner of Police
Tirupur City.

... Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus to call for the entire records of the second respondent, pertaining to the order made in C.No.20/G/IS TPR © 2014 Tamil Nadu Act 14/1982 dated 20.11.2014 as a Goonda and quash the same and direct the respondents to produce the detenu, namely A.Sarputheen, so of Abdul Razak, who is detained at the Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner : Mr.J.Franklin

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

ORDER

[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 in C.No.20/G/IS TPR © 2014, dated 20.11.2014 whereby the detenu/the son of the petitioner herein, by name, A.Sarputheen, aged 26 years, son of Abdul Razak, 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.Though many grounds have been raised in the petition, Mr.J.Franklin, learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of the copies of the bail orders in the adverse 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 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 copies of the bail orders in the adverse 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 8 of the Grounds of Detention that in the adverse cases, the detenu was released on bail by the learned Principal Sessions Judge, Thiruppur in Cr.MP No.1614/2014 in respect of Crime No.569 of 2014 on 27.10.2014 for the offences registered under Sections 341, 294(B), 387, 307, 427, and 506(ii) IPC on the file of 15, Velampalayam Police Station, but the detenu has not furnished any sureties as on the date of passing of the detention order and that he is in prison on the said date. Apart from that, the detenu was released on bail in other adverse cases, on 13.11.2014 namely, in Cr.M.P No.1494/2014 in respect of Crime No.18 of 2014 for the offences registered under Sections 454 and 380 IPC on the file of Anuppar Palayam Police Station, in Cr.M.P No.1491/2014 in respect of Crime No.131 of 2014 for the offences registered under Sections 454 and 380 IPC on the file of 15 Velampalayam Police Station, in Cr.M.P No.1493/2014 in respect of Crime No.439 of 2014 for the offences registered under Sections 454 and 380 IPC on the file of Anuppar Palayam Police Station, in Cr.M.P No.1492/2014 in respect of Crime No.465 of 2014 for the offences registered under Sections 454 and 380 IPC on the file of 15 Velampalayam Police Station, in Cr.M.P No.1496/2014 in respect of Crime No.493 of 2014 for the offences registered under Sections 454 and 380 IPC on the file of 15 Velampalayam Police Station and in Cr.M.P No.1495/2014 in respect of Crime No.967 of 2014 for the offences registered under Sections 454 and 380 IPC on the file of Anuppar Palayam Police Station, but the detenu has not furnished any sureties as on the date of passing of the detention order and

that he is in prison on the said date. Therefore, non supply of the copies of the bail orders in the adverse cases to the detenu would vitiate the impugned detention order.

6. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain the copies of the said bail orders in the adverse cases. The said bail orders were 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, non supply of the copies of the bail orders in the adverse cases to the detenu would vitiate the impugned detention order.

7. 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)."

8. As already analysed by us, in the facts and circumstances of the present case, non-supply of the copies of the bail orders in the adverse cases, 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 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(CS III)

//True Copy//

Sub Assistant Registrar

mmi/cla

To

1. State of Tamil Nadu,
Rep. By its Secretary to Government,
Home, Prohibition and Excise Department
Fort St. George, Chennai 600 009.
2. The Commissioner of Police
Tirupur City.
3. The Superintendent
Central Prison, Coimbatore.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. THE PUBLIC PROSECUTOR,
HIGH COURT, CHENNAI.

सत्यमेव जयते

HCP.No.870/2015

KM(CO)
CA(15/07/2015)

WEB COPY