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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.93/2015

Raja @ Thiruttu Raja

...Petitioner/
Petitioner of the detenu

Vs

1. The Secretary to Government,
Government of Tamil Nadu, [Home],
Prohibition & Excise Department
Fort St George, Chennai - 600 009.

2. The Commissioner of Police
Chennai Police, Chennai-8.

...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 of the 2nd respondent herein concerned in Memo No.1430/BDFGISSV/2014 dated 04.10.2014 and set aside the order of detention passed therein against me by namely Raja @ Thiruttu Raja, son of Sridhar, Hindu, aged about 32 years, who is the petitioner herein, quashing the same and setting him at liberty now detained in Central Prison, Puzhal, Chennai.

For Petitioner : Mr.S.Pannerselvam

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 second respondent vide Proceedings in Memo No.1430/BDFGISSV/2014 dated 04.10.2014, whereby the petitioner/the detenu 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".

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2. Though many grounds have been raised in the petition, Mr.S.Pannerselvam, 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.

3. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.958/2014 registered by N2 Kasimedu Police Station and the detenu has not moved any bail application in the ground case as on the date of the passing of the detention order and the bail application filed in the 2nd adverse case before the learned 16th Metropolitan Magistrate, George Town, Chennai in CMP No.2355/2014 was pending. He would also contend that the detaining authority has arrived at the subjective satisfaction by relying upon the similar case in which the accused Vadivel, was released on bail by the learned Principal Sessions Judge, Chennai, in CMP No.1862/2013 in connection with the case in Cr.No.98/2013 on the file of the N4 Fishing Harbour Police Station. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail application 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 there is imminent possibility of the detenu coming out on bail in the said case. 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 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 [Crl.] 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] .

4. 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.

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

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6. As evidenced from paragraph 4 of the grounds in the order of detention, the detenu is in remand in the ground case [Cr.No.958/2014] and he has not filed any bail application in the said ground case as on the date of passing of the detention order. Merely placing reliance on a similar case wherein, the accused who is not at all related to the ground case nor the co-accused of the detenu herein, is not sufficient to pass an order of detention. 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 by placing reliance on a similar 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, 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.

7. 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."



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[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 :

".....

In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail..... A mere ipse dixit statement in the grounds of detention cannot sustain the



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.

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

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second 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(CO)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Secretary to Government,
Government of Tamil Nadu, [Home],
Prohibition & Excise Department
Fort St George, Chennai - 600 009.
2. The Commissioner of Police
Chennai Police, Chennai-8.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison
Puzhal, Chennai.
5. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

H.C.P.No.93/2015

BR (CO)
PSI (22.06.2015)