

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

H.C.P.No.1752 of 2014

Meenatchi

..Petitioner

Vs

1.The Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai 600009

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

..Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to call for the records in connection with the order of detention passed by the second respondent dated 05.06.2014 in B.D.F.G.I.S.S.V.No.40/2014 against the petitioner's son, Nataraj, aged 27 years, S/o Adhimoolam, who is confined at Central Prison, Puzhal, Chennai- 600 066 and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel

For Respondents : Mr.C.Emalias,
Additional Public Prosecutor .

ORDER

This Habeas Corpus Petition is filed, by the mother of the detenu, namely, Nataraj, aged 27 years, Son of Adhimoolam, to issue a Writ of Habeas Corpus, to call for the records, in B.D.F.G.I.S.S.V.No.40/2014 dated 06.06.2014, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) 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 14/1982), branding him as a "Goonda, in the Central Prison, Puzhal, Chennai - 600 066, to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. Though several grounds have been raised in this Habeas Corpus Petition, Mr.S.Senthil Vel, the learned counsel for the Petitioner has confined his argument only in respect of non-application of mind, on the part of the Detaining Authority in passing the impugned detention order. The detenu has been in remand in Cr.No.344/2014 (ground case) registered at Mariamalar Nagar Police Station for the offence under Sections 341, 294(b), 392, 307 and 506(ii) of IPC and the bail application filed by the detenu before the Court of Principal District and Sessions Court, Chengalpattu in CrI.M.P.No.1486/2014 is pending. By referring to the adverse case in Cr.No.182/2014 registered under Section 399 of IPC as similar case, wherein bail was granted to the detenu in CrI.M.P.No.884/2014 on 24.03.2014 by the Principal District Sessions Judge, Chengalpattu, the detaining authority has arrived at the subjective satisfaction that there is very likelihood of the detenu coming out on bail in the ground case also. But the offences in the similar case (adverse case) relied on by the Detaining Authority are not similar to that of the ground case and therefore, the same cannot be compared with the offences in the ground case so as to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case also. Moreover, the similar case referred to by the Detaining Authority are not that of any other accused or co-accused, but it relates to the adverse cases registered against the detenu and hence, impugned detention order is vitiated.

3. Per contra, Mr.C.Emalias, 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.

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 the paragraph 5 of the impugned detention order that the detenu has been in remand in Cr.No.344/2014 (ground case) registered at Maraimalar Nagar Police Station for the offence under Sections 341, 294(b), 392, 307 and 506(ii) of IPC and that the bail application filed by the detenu before the Court of Principal District Sessions Court, Chenglepatu in CrI.M.P.No.1486/2014 is pending. The Detaining Authority has referred the adverse case in Cr.No.182/2014 under Section 399 IPC wherein bail was granted in CrI.M.P.No.884/2014 on 24.03.2013, as similar case. By referring so, the Detaining Authority has arrived at the subjective satisfaction that there is very likelihood of the detenu coming out on bail in the ground case also.

6. On a perusal of the Paper Book, it is seen that the bail application filed by the detenu before the Court of Principal District and Sessions Court, Chenglepatu in CrI.M.P.No.1486/2014 in the ground case is stated to have been pending by the Detaining

Authority. Further, on a perusal of the offence in the said similar case (adverse case) relied on by the Detaining Authority and the ground case, on the face of it, it is apparent that the offence in the similar case (adverse case) relied on by the Detaining Authority are not similar to that of the ground case and therefore, the same cannot be compared with the offences in the ground case so as to arrive at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case also. Moreover, the similar case referred to by the Detaining Authority is not that of any other accused or co-accused, but it relates to the adverse case registered against the detenu. When the offences are not one and the same in the ground case and in the similar case relied on by the Detaining Authority and the bail application filed in the ground case is pending, the subjective satisfaction arrived at by the Detaining Authority that there is a real possibility of the detenu coming out on bail in the ground case also, on the basis of the bail granted in the similar case, referred to by the Detaining Authority is baseless, which is an indicative of non-application of mind and vitiates the impugned detention order. Therefore, the impugned detention order cannot be sustained in the eye of law and the same is liable to be set aside.

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

8. 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

csh/vsi

To

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Government of Tamil Nadu, Fort St. George,
Chennai 600009
2. The District Collector and District Magistrate,
Kancheepuram District, Kancheepuram.
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, Madras.

HCP.No.1752 of 2014

SK(CO)

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