

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

HCP.No.1903/2014

Gandhi
Petitioner

Vs

1.The State of Tamil Nadu by its Secretary to Government
Home, Prohibition & Excise Department, Fort St.George
Chennai 600009

2.The District Collector and District Magistrate
Kancheepuram District
Respondents

Prayer:- This Habeas Corpus Petition is filed, under Article 226
of the Constitution of India for the relief as stated therein.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.C.Emalias, APP

ORDER

This Habeas Corpus Petition is filed, by the mother of the detenu, namely, Murugan @ Poonai Murugan, aged 26 years, son of Shanmugam, to issue a Writ of Habeas Corpus, to call for the records, in BDFGISSV No.51/2014 dated 10.07.2014, 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, Vellore and to quash the same and to direct the Respondents to produce the body and person of the detenu and set him at liberty forthwith.

2. As per the impugned detention order, the detenu came to adverse notice, in the following cases:-

a. Adverse Cases:-

S.No.	Police Station/Crime Number	Section of Law
1	Kanchi Taluk PS Cr.No.727/2013	147, 148, 120B, 302 of IPC
2	Siva Kanchi PS Cr.No.280/2014	399 of IPC

b. Ground Case:-

S.No.	Police Station/Crime Number	Section of Law
1	Siva Kanchi PS Cr.No.549/2014	294(b), 397, 506 (ii) of IPC and 3 (i) of TNPPDL Act

3. Though several grounds have been raised in this Habeas Corpus Petition, Mr.D.Balaji, 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.549/2014 (ground case) registered at Siva Kanchi Police Station for the offence under Sections 294(b), 397, 506 (ii) of IPC and 3(i) of the TNPPDL Act. The Detaining Authority, by referring to the adverse cases in Cr.No.727/2013 under Sections 147, 148, 120B and 302 of IPC and in Cr.No.280/2014 under Section 399 of IPC, on the file of the Siva Kanchi Police Station as similar cases, wherein bail was granted to the detenu in the said similar cases (adverse cases) in CMP.Nos.94 and 578/2014 on 22.01.2014 and 16.04.2014 respectively by the learned District Sessions Judge II, Kancheepuram, has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case also. But the offences in the similar cases (adverse cases) 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 cases 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.

4. 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.

5. 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.

6. It is seen from the paragraph 5 of the impugned detention order that the detenu has been in remand in Cr.No.549/2014 (ground case) registered at Siva Kanchi Police Station for the offence under Sections 294(b), 397, 506(ii) of IPC and 3(i) of the TNPPDL Act. The Detaining Authority has referred the adverse cases in Cr.No.727/2013 under Sections 147, 148, 120B and 302 of IPC and in Cr.No.280/2014 under Section 399 of IPC on the file of the Siva Kanchi Police Station, wherein bail was granted to the detenu in CMP.Nos.94 and 578/2014 on 22.01.2014 and 16.04.2014 respectively, as similar cases. By referring so, the Detaining Authority has arrived at the subjective satisfaction that there is a real possibility of the detenu coming out on bail in the ground case also.

7. On a perusal of the offences in the said similar cases (adverse cases) relied on by the Detaining Authority and the ground case, as tabulated above, on the face of it, it is apparent that the offences in the similar cases (adverse cases) 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 cases 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. When the offences are not one and the same in the ground case and in the similar cases relied on by the Detaining Authority, 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 also, on the basis of the bail granted in the similar cases, 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.

8. 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.

9. 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/-
Asst.Registrar (AD I)

/true copy/

Sub Asst. Registrar

Srcm

To:

- 1.The Secretary to Government,
The State of Tamil Nadu
Home, Prohibition & Excise Department,
Fort St.George, Chennai 600009
2. The District Collector and District Magistrate,
Kancheepuram District
3. The Superintendent
Central Prison, Vellore
4. The Joint Secretary to Government
Public (Law and order) Fort Saint George,
Chennai
5. The Public Prosecutor, Madras High Court, Madras

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