

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN  
AND

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

H.C.P.No.1990 of 2014

S.Kavitha

..Petitioner

Vs

1.The State represented by its Secretary to Government,  
(Home) Prohibition & Excise Department,  
Fort St.George  
Chennai 600009

2.The District Collector & District Magistrate,  
Namakkal District, Namakkal.  
Respondents

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Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to call for the records pertaining to the order of detention passed by the 2<sup>nd</sup> respondent made in detention Order C.M.P.No.5/ITO/2014 dated 03.07.2014 and set aside the same and produce the detenu, Raja @ Sivaraj, S/o Manickkam, Male, aged 36 years, now detained in Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : M/s.S.Manoharan

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

ORDER

This Habeas Corpus Petition is filed, by the wife of the detenu, namely, Raja @ Sivaraj, aged 36 years, S/o Manickkam, to issue a Writ of Habeas Corpus, to call for the records, in C.M.P.No.5/ITO/2014/M1 dated 03.07.2014, 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) the Tamil Nadu Act 14 of 1982, branding him as a "Immoral Traffic Offender", in the Central Prison, Salem, and to quash the same and to direct the Respondents to produce the body

of the detenu and set him at liberty forthwith.

2. Mr.S.Manoharan, the learned counsel for the petitioner contended that though in the impugned order of detention, it is specifically stated that the detenu has moved bail application and the same was dismissed, but without any cogent material, the Detaining Authority has arrived at the conclusion that the detenu is likely to be released on bail by filing a bail application in the appropriate forum later and passed the impugned order of detention and hence, the same is vitiated.

3. Per contra, Mr.C.Emalias, the learned Additional Public Prosecutor would submit that there is no illegality or infirmity in the impugned order of detention and that the detaining authority has observed that there is a real possibility of the detenu coming out on bail by filing a bail application and if he comes out on bail, he would indulge in such activities in future, which will be prejudicial to the maintenance of the public peace and hence, there is a imminent necessity to detain the detenu under the provisions of the Tamil Nadu Act 14/1982, in order to prevent him from indulging in such activities in future, which are prejudicial to the maintenance of public peace and as such, the detaining authority has rightly passed the impugned detention order.

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. The perusal of the impugned order of detention would reveal that the detenu has filed bail application and the same was dismissed and thereafter, he has not filed any bail application. But, the detaining authority, without any cogent material available on record, has arrived at the conclusion that there is a real possibility for the detenu to come out on bail, by filing a bail application later. The above finding of the detaining authority is based on mere surmises and conjectures. There is no bail application pending on the date of passing of the impugned detention order. But, the detaining authority, without any cogent material available on record, has arrived at the conclusion that if the detenu comes out on bail, he is likely to indulge in such activities, which are prejudicial to the maintenance of public peace. In the absence of any materials on record, on the basis of which, the detaining authority could be satisfied that the detenu was likely to be released on bail, the mere ipse-dixit of the detaining authority is not sufficient to sustain the order of detention.

6. At this juncture, it is relevant to refer the decision of the Honourable Supreme Court reported in 2006-1-MLJ-Cr1- 539 (T.V.Saravanan alias S.A.R.Prasanna Venkatachariar Chaturvedi v. State, through Secretary and Another). The Honourable Supreme Court, in the said decision, has held as hereunder:-

"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."

7. In Abdul Sathar Ibrahim Mani Vs. Union of India (AIR-1991-SC-2261), it is held as follows:-

"Where the detenu was in custody at the time of passing an order of detention what is strictly required is whether the detaining authority was aware of the fact that the detenu was in custody, and if so was there any material to show that there were compelling reasons to order detention in spite of his being in custody. These aspects assume importance because of the fact that a person who is already in custody is disabled from indulging in any prejudicial activities and as such the detention order may not normally be necessary. Therefore, the law requires that these two tests have to be satisfied in the case of such detention of a person in custody."

8. In yet another decision of the Honourable Supreme Court reported in Ramesh Yadav Vs. District Magistrate, Etah and others (AIR-1986-SC-315), the Honourable Supreme Court has observed as follows:-

"Where the order of detention was passed because the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area, the same was not proper. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in

detention as an under trial prisoner was likely to get bail, an order of detention under the Act should not ordinarily be passed."

9. In Chelladurai Vs. State of Tamil Nadu (2009-3-MLJ-Crl-790-Mad), this court has observed that there is no material on record to come to a definite conclusion that there is real possibility of detenu coming out on bail by filing bail application and the conclusion of the detaining authority is not based on any material and shows non application of mind. In yet another decision of this court rendered in the case of D.Sivasakthi Vs. District Collector and District Magistrate (2009-3-MLJ-Crl-836-Mad), the same view was expressed and the detention was quashed on the said ground.

10. The principles laid down in the decisions cited supra are squarely applicable to the facts of the present case. The detaining authority before passing the detention order must satisfy themselves that there is likelihood of the detenu being released on bail and that satisfaction ought to be reached on cogent material. In this case also, the detaining authority, in the absence of any cogent material available on record, has inferred that the detenu would be released on bail and if he is released on bail, he would indulge in such activities in future, which are prejudicial to the maintenance of public peace. There must be cogent material before passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse-dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail application or the pendency of the bail application filed by the detenu is not a cogent material and detention order based on such material is liable to be quashed.

11. In the light of the above said principles laid down by the Honourable Supreme Court and this Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

12. 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 (Records)

/true copy/

Sub Asst. Registrar

vsi

To

1. The Secretary to Government,  
(Home) Prohibition & Excise Department,  
Fort St. George, Chennai 600009

2. The District Collector & District Magistrate,  
Namakkal District, Namakkal.

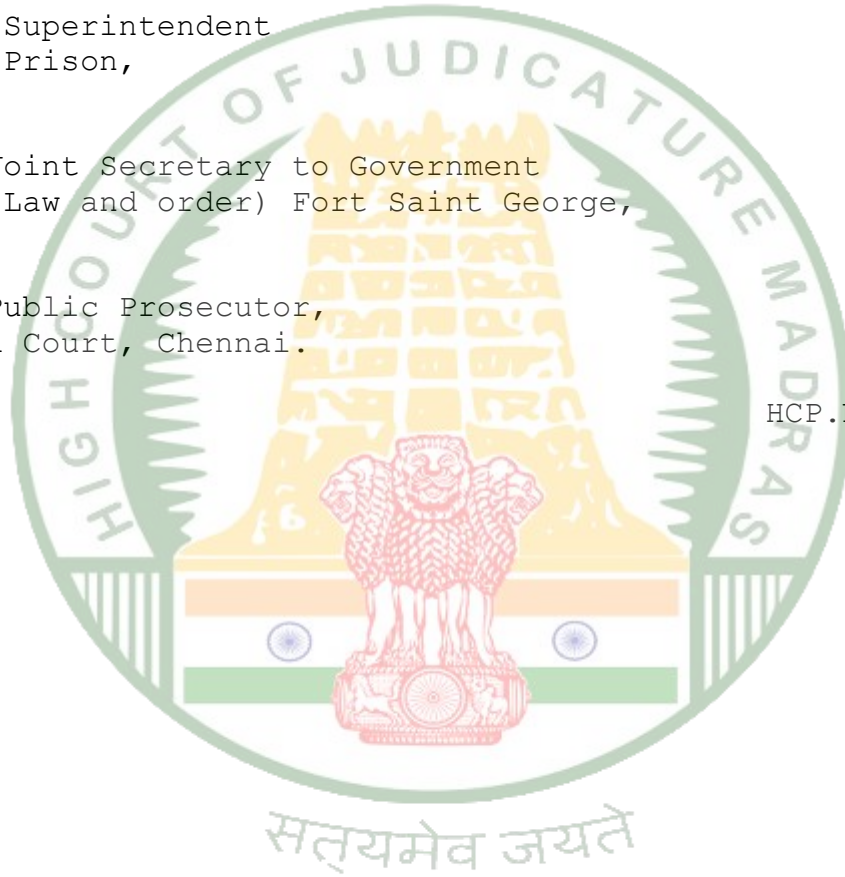
3. The Superintendent  
Central Prison,  
Salam

4. The Joint Secretary to Government  
Public (Law and order) Fort Saint George,  
Chennai

5. The Public Prosecutor,  
High Court, Chennai.

HCP.No.1990 of 2014

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