

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.1.2015

Coram:

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

H.C.P.No.2173 of 2014

A.Maheshwari

.. petitioner

vs.

1. The Secretary to the Government
Home Prohibition and Excise Dept.,
Fort St. George, Chennai - 600 009

2. The Commissioner of Police
Greater Chennai, Vepery
Chennai - 600 007

.. Respondents

Prayer: This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India to issue a writ of Habeas corpus calling for the records pertaining to the order of detention passed by the 2nd respondent made in BDFGISSV/847/2014 dated 31.07.2014 and quash the same and directing the 2nd respondent produce the body and person of the petitioner's husband Venkatesan @ Kuthirai, Venkatesan S/o. Krishnan, aged about 44 years, now confined in central prison, puzhal, Chennai.

For petitioner : Mr.K.A.Mariappan

For Respondents: Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This Habeas Corpus Petition is filed by the wife of the detenu, namely, Venkatesan @ Kuthirai Venkatesan, aged 44 years, son of Krishnan, to issue a Writ of Habeas Corpus to call for the records in BDFGISSV/847/2014, dated 31.7.2014, passed by the second 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 of 1982), read with orders issued by the Government in G.O.(D) No.143, Home, Prohibition and Excise (XVI) Department, dated 18.7.2014, under Sub Section (2) of Section 3 of the said Act, branding him as a "Goonda",

in the Central Prison, Puzhal, Chennai, and 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, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copies of the bail applications filed in similar 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, 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 applications 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 4 of the Grounds of Detention that in a similar case registered at B-1, North Beach Police Station in Crime No.600 of 2013, under Section 392 IPC, bail was granted by the Court of VII Metropolitan Magistrate Court, George Town, Chennai, in M.P.No.303 of 2013 and also in a similar case registered at M-5, Ennore P.S. In Crime No.273 of 2013, under Sections 294(b), 384 IPC bail was granted by the learned Judicial Magistrate, Thiruvottriyur, to the accused Manimaran in Crl.M.P.No.593 of 2013. 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 applications filed in similar cases. The said bail applications filed in similar cases were documents 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 it did not form part of the Paper Book furnished by the Prosecution. Therefore, non-supply of the copies of the bail applications in similar cases to the detenu would vitiate the impugned detention order.

6. 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)."

7. This Court in JARINABEGAM Vs. STATE OF TAMIL NADU BY SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, CHENNAI AND ANOTHER (2007-1-MLJ-CRL-18) relying upon the decision of the Honourable Supreme Court cited supra has held that non-supply of copies of the bail applications to the detenu has the effect of vitiating the order of detention.

8. As already analysed by us, in the facts and circumstances of the present case, non-supply of the copies of the bail applications filed in similar cases to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such vital documents, 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 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

Superintendent Central Prison, Puzhal, Chennai.

Joint Secretary to Government,
(Law & order) Fort St. George Chennai-9

Public Prosecutor,
Court, Madras.

S.K.A. Mariappan , Advocate SR.No.4596

H.C.P

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