

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

H.C.P.No.2311 of 2014

Amir Bheevi

Petitioner/mother of the

..

detenue

Vs

1.The State of Tamilnadu,
rep. By its Secretary to the Government,
Home, Prohibition & Excise Department,
Fort St.George,
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 pertaining to the order of detention passed by the 2nd respondent made in detention Order, BDFGISSV No.66/2014 dated 17.08.2014 and quash the same and direct the respondents to produce the body and person of the detenu, Khathar @ Sheik Khathar, S/o Saleem, who is now aged about 26 years, now confined in Central Prison, Vellore, and set him at liberty.

For Petitioner : Mr.C.C.Chellappan

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

ORDER

This Habeas Corpus Petition is filed, by the father of the detenu, namely, Khathar @ Sheik Khathar, S/o Saleem, aged 26 years, to issue a writ of Habeas Corpus, to call for the records, in BDFGISSV No.66/2014 dated 17.08.2014, 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 of the detenu and set him at liberty forthwith.

2. Though several grounds have been raised in this Habeas Corpus Petition, Mr.C.C.Chellappan, 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. The detenu was arrested in Crime No.592/2014 in Kanchi Taluk Police Station and was remanded by the Judicial Magistrate No.2, Kanchipuram. The bail Application filed by him before the District Sessions Court, No.2, Kanchipuram in CrI.M.P.No.1138/2014 was dismissed on 14.08.2014. Again, he had filed another bail application before the District Sessions Court No.2, Kanchipuram, in CrI.M.P.No.1219/2014 and the same was pending. But the Detaining Authority has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail. In a similar case, in Crime No.671/2006, the accused was released on bail for the offence under sections 302 and 201 IPC by the learned Judicial Magistrate-I, Kanchipuram in C.M.P.No.3559/2008. The said similar case is not that of the co-accused of the detenu. Learned counsel added that admittedly, the bail application filed by the detenu in the ground case was dismissed and the second bail application was pending. When the bail application is pending there is no presumption that he would come out on bail. Therefore, the learned counsel would contend that no cogent materials are available before the detaining Authority to conclude/apprehend that the detenu is likely to get bail in the ground case and there is no imminent possibility of the detenu coming out on bail in the said case. The apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out on bail is not justifiable as in the first adverse case relating to Crime No.671/2006, the detenu was released on bail on the default committed by the Police in not filing the charge sheet within the stipulated time as contemplated under section 167(ii) Cr.P.C. Further the bail application filed by the detenu for the second time is still pending and the detaining authority could not foresee the nature of the order that would be passed by the Court. By the reason of pendency of the application one could not easily come to the conclusion that the Court would certainly grant bail to the accused. Hence, 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 i.e., likelihood 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 [CrI.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] ; [b]2005 [1] CTC 577 [VELMORUGAN @ VELU Vs. THE COMMISSIONER OF POLICE] ; [c] 2012 [7]

SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] ; [d]2013 [1] LW (Cr1.) 460 [LAKSHMI BAI NAT VS. THE SECRETARY TO THE GOVERNMENT, HOME, PROHIBITION AND EXCISE DEPT., FORT ST.GEORGE, CHENNAI-9 AND ANOTHER] and [e] 2008 [3] MLJ (Cr1.) 144 [S.ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER].

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.

6. As evidenced from paragraph 5 of the grounds of detention, the detenu is in remand in the ground case (Crime No.592/2014) and the bail application filed by the detenu in the ground case was pending as on the date of passing of the detention order. The similar case referred to and relied upon by the detaining authority to infer that the detenu would be granted bail in the ground case is not that of the co-accused. As rightly contended by the learned counsel appearing for the petitioner, the pendency of the bail application would not certainly enable the detaining authority to conclude that the Court would certainly grant bail to the accused. It is nothing but pre-judging the matter. Therefore on this ground the impugned order is not sustainable.

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."

[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 detention order and has to be ignored.....

In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail,

and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground."

(emphasis supplied)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

14. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law."

[d] In the judgment reported in 2013 [1] LW (Cr1.) 460 [CITED SUPRA], the Division bench of this Court at Madurai has held as follows:-

4. In this regard, the learned counsel for the petitioner would rely on the Judgment of a Division Bench of this Court in Jother vs. The Secretary to Government, reported in 2012 (2) LW (Cr1.) 527, wherein, in identical circumstances, in Paragraph No.17, the Division Bench has held as follows:

"17. Further, unless, the similar cases referred to by the Detaining Authority, in the grounds of detention, are comparable with the cases relating to the detenu, in all aspects, it would not be open to the Detaining Authority to arrive at his conclusion that the detenu would be enlarged on bail. In the present case, It has not been shown that all the relevant materials relating to the similar cases,

referred to by the Detaining Authority had been furnished to the detenu, in order to enable him to make an effective representation against the detention order. The failure of the Detaining Authority to furnish all the materials would, no doubt, cause substantial prejudice to the detenu, resulting in the failure on the part of the Detaining Authority in following the mandate, enshrined in Clause(5) of the Article 22 of the Constitution of India."

5. Relying on the above Judgment of the Division Bench, the learned counsel would submit that in the case on hand also, since the materials relating to the similar case have not been furnished to the detenu except bail order copy alone and since the satisfaction arrived at by the Detaining Authority is not based on any relevant materials, the Detention Order is liable to be set aside.

7. Keeping in view the above legal principles, if we look into the facts involved in the case, there can be no dispute that the detaining authority had come to the conclusion that there is real possibility of the accused coming out on bail and the said conclusion is based on the fact that in a similar case in Woraiyur P.S.Cr.No.989/2010, bail was granted to the accused therein. But, it is the contention of the petitioner that relevant documents relating to the said case, such as FIR, Mahazar, etc., have not been furnished. To the contrary, only copy of the bail order has been given. In our considered opinion, non-furnishing of all these material documents to the detaining authority and non-consideration of the same would only indicate the total non-application of mind on the part of the detaining authority. The detaining authority in a mechanical fashion only on considering the bail order has come to the conclusion that there is a real possibility of the detenu coming out on bail."

[e] In 2008 [3] MLJ (Cr1.) 144 [S. ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER], it has been held as follows:

"Where a bail application filed by the detenu was pending before the Court and the Detaining Authority coming to the conclusion that there was a real possibility of the detenu coming out on bail, even prior to the passing of an order on bail application, held the detention order was passed without proper application of mind, rendering it vitiated."

8. We will now consider the question whether in the instant case, the facts required the detaining authority to be aware of the contents of the bail application as also the order of the Court thereon. From the facts of this case, we note that the detenu was released on bail by the Judicial Magistrate No.1, Kancheeruram by

order dated 23.09.2008 since no charge sheet was laid within the stipulated time as contemplated under Section 167(ii) of Cr.P.C. This was the vital factor in the order of the similar case which ought to have been taken note of by the detaining authority. Therefore, in our opinion, this is a vital factor to be noticed of which, the detaining authority ought to have taken and the non-consideration of this fact, in our opinion, vitiates the order of detention.

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. 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

vsi

To

1. The Secretary to the Government,
Home, Prohibition & Excise Department,
Fort St.George,
Chennai 600009
2. The District Collector and District Magistrate,
Kancheepuram District,
Kancheepuram
3. The Superintendent Central Prison, Vellore.
4. The Joint Secretary to Government,
Public(Law & order) Fort St. George Chennai-9
5. The Public Prosecutor,
High Court, Madras.

HCP.No.2311 of 2014

SR(CO)
Eu 31.03.2015