

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM:

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

HCP.No.2477 of 2014

M.Gabriel

...Petitioner

Vs

1.The State of Tamilnadu,
rep. By the Secretary to Government
Home, Prohibition & Excise Department,
Secretariat, Chennai 600009.

2.The Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 600 008.

...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 16.08.2014 in BDFGISSV.No.972/2014 against the petitioner's son, Fransis, male, aged 25 years, S/o Caberial, who is confined at Central Prison, Puzhal, Chennai and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner : Mr.G.Ashok Kumar

For Respondents : Mr.N.Thambidurai,
Addl.Public Prosecutor

ORDER

This Habeas Corpus Petition is filed, by the father of the detenu, namely, Fransis, aged 25 years, son of Caberial, to issue a Writ of Habeas Corpus, to call for the records in BDFGISSV No.1972/2014, dated 16.08.2014, 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, Puzhal, Chennai, 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. Even though Mr.G.Ashok Kumar, the learned counsel for the petitioner raised many grounds, in assailing the impugned order of detention, he confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention, which would vitiate the impugned detention order.

3. According to the learned counsel for the petitioner, in respect of first adverse case in Crime No.668 of 2014 for the offence under sections 341 and 392 IPC, there is no mention in the grounds of detention, whether the detenu has moved bail application or not. The Detaining Authority, in paragraph No.5 of the detention order, while referring to the bail application filed in the ground case in Crime No.894/2014, omitted to refer about the said adverse case, which shows the non-application of mind on the part of the detaining authority and as such, the impugned detention order is liable to be quashed.

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. However, he has admitted that it was omitted to be mentioned in the detention order, whether the detenu has obtained bail or not in the adverse case.

5. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and also perused the impugned order of detention and the materials placed on record.

6. A perusal of the impugned detention order would go to show that in paragraph No.4 of the Grounds of detention, while

referring to the ground case in Crime No.894/2014, that the detenu has moved bail application before the Principal Sessions Court in CrI.M.P.No.11858/2014 and the same was dismissed and another bail application was moved before the Principal Sessions Court, Chennai in Cr.M.P.No.12427/2014 and the same is pending, however, the detaining authority has omitted to mention about the adverse case, Crime No.668/2014 on the file of F1 Chindadripet Police Station. There is no mention in the detention order as to whether any step was taken to move bail application in the said adverse case. In the absence of any particulars in this regard and any material to show that the detenu is likely to come out on bail in the adverse case, the subjective satisfaction arrived at by the detaining authority that there is real possibility of the detenu in coming out on bail, is baseless and unfounded and is on total non-application of mind, as such, the same stands vitiated.

7. The Division Bench of our High Court headed by one of us, in the decisions reported in (i) Jothi v. Secretary to the Government, State of Tamil Nadu, Home, Prohibition and Excise Department, Chennai -9, 2012-2 L.W.(CrI.) 527 and (ii) G. Kuppan v. State of Tamil Nadu represented by its Secretary Co-operative Food and Consumer Production Department, Chennai, 2013-2-L.W. (CrI.)56: LNIND 2013 MAD 1077: (2013)2 MLJ (CrI) 801 had dealt with similar situation regarding want of particulars and materials in support of subjective satisfaction purportedly arrived at by the detaining authority that the detenu is likely to be enlarged on bail and he would indulge in activities, which would be prejudicial to the maintenance of public order. It is held in the judgment reported in Jothi vs. Secretary to the Government, State of Tamil Nadu, Home Prohibition and Excise Department Chennai-9 (supra) that in the absence of sufficient and cogent materials for the detaining Authority to arrive at his conclusion would be a mere ipse dixit. In the other Judgment reported in G.Kuppan v. State of Tamil Nadu represented by its Secretary Co-operative Food and Consumer Production Department, Chennai,(supra), it is observed that the failure to state sufficient reasons to conclude that the detenu would come out on bail shows non-application of mind by the detaining authority, while passing the impugned order. In both the cases, the detention order for the reasons stated above, was held to be vitiated and was quashed.

8. As already analysed by us, in the facts and circumstances of the present case, the non-mentioning of particulars of the adverse case, in the detention order, whether bail application was filed by the detenu or not, has the effect of vitiating the impugned detention order.

9. In the light of the above judgments 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 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(J)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary to Government
Home, Prohibition & Excise Department,
Secretariat,
Chennai 600009.
2. The Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 600 008.
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,
Madras High Court, Madras

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NM (CO)
PSI (01.04.2015)