

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.2657/2014

Mythili Petitioner/Mother of the detenu
Vs

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

2.The Commissioner of Police,
Chennai Police, Chennai-8 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.V.Balu

For Respondents : Mr.A.N.Thambidurai

ORDER

This Habeas Corpus Petition is filed by the mother of the
detenu, namely, Gopinath, aged 24 years, son of Selvaraj, to issue
a Writ of Habeas Corpus, to call for the records, in Memo
No.1220/BDFGISSV/2014, dated 11.09.2014 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 to set
him at liberty forthwith.

2. Though several grounds have been raised in this Habeas
Corpus Petition, Mr.V.Balu, the learned counsel for the petitioner
has assailed the impugned detention order only on the ground of
non-supply of copy 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, Mr.A.N.Thambidurai, 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 copy 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 impugned detention order that in a similar case registered at S11 Tambaram Police Station Cr.No.1340/2013 under Sections 341, 336, 427, 392 and 506 (ii) of IPC, bail was granted by the Court of Judicial Magistrate at Tambaram in Cr.MP.No.17907/2013 and that in another similar case registered under Sections 294(b), 341, 336, 307, 397 and 506(ii) of IPC at V5 Thirumangalam Police Station Cr.No.1640/2011, bail was granted by the Court Principal Sessions, Chennai in Cr.MP.No.10992/2011. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain the copy of the said bail applications filed in similar cases. The said bail applications filed in similar cases were the 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 copy 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 Exercise 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 a copy of the bail application to the detenu has the effect of vitiating the order or detention.

8. As already analysed by us, in the facts and circumstances of the present case, non-supply of the copy 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 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

To:

- 1.The Public Prosecutor, Madras High Court, Madras
- 2.The Secretary to Government,
Home, Prohibition & Excise Department, Fort St.George, Chennai
600009
- 3.The Commissioner of Police, Chennai Police, Chennai-8
- 4.The Superintendent, Central Prison, Puzhal, Chennai.
- 5.The Joint Secretary to Government,
Public (L&O) Fort St.George, Chennai.

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