

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

HCP.No.2727/2014

P.Kamala
Petitioner

Vs

1.The District Magistrate and District Collector
Tiruppur District, Tiruppur.

2.The Principal Secretary to the Government
of Tamil Nadu,
Home, Prohibition and Excise Department
Secretariat, Chennai 9.
Respondents

Prayer:- This Habeas Corpus Petition is filed, under Article 226 of the Constitution of India in the nature of a writ, calling for the records in Cr.M.P.No.06/Goonda/2014 on the file of the first respondent, quash the detention order dated 13.09.2014 and direct the production of the detenu Dhil @ Dhiljith, son of Purushothaman, aged about 31 years, presently detained at the Central Prison, Coimbatore, under the Tamil Nadu Act 14 of 1982 before this Court and set him at liberty.

For Petitioner : Mr.H.Rajasekar

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

ORDER

The Petitioner, who is the mother of the detenu, has filed this Petition challenging the order of detention passed by the first respondent in Cr.M.P.No.06/Goonda/2014, dated 13.09.2014, branding the detenu as a "Goonda" under 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].

2. Though several grounds have been raised in this Habeas Corpus Petition, Mr.H.Rajasekar, the learned counsel for the petitioner has assailed the impugned detention order only on the

ground of non-supply of copy of the bail application in similar case, 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 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.

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 entire materials available on record.

5. It is seen from para 4 of the grounds of detention that the Detaining Authority has stated that he is aware that in respect of Palladam Police Station Crime No.1248/2014, the detenu has filed a first anticipatory bail petition before the High Court, Madras in CrI.O.P.No.32039/2012 and the same was dismissed on 15.03.2013; that the second anticipatory bail petition before the Hon'ble High Court, Madras, in CrI.O.P.No.15130/2013 was dismissed on 28.05.2013; that the third anticipatory bail petition before the Hon'ble High Court, Madras in CrI.O.P.No.25747/2013 was also dismissed on 01.10.2013. The Detaining Authority has stated that he is also aware that the detenu filed a bail petition before the Principal Sessions Court, Tiruppur on 18.08.2014 in C.M.P.No.1343/2014 and the same was dismissed on 21.08.2014. Further, it is stated that in a similar case registered by Palladam Police Station Crime No.1248/2014, u/s 363 IPC, bail had been granted to the co-accused and therefore, there is real possibility of the detenu coming out on bail by filing bail petition before the Courts concerned. 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 application in similar case. The said bail application filed in similar case was a document relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such a document has 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 application in similar case 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 the copy of the bail application in similar case 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 application in similar case, to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such a vital document, 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.

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

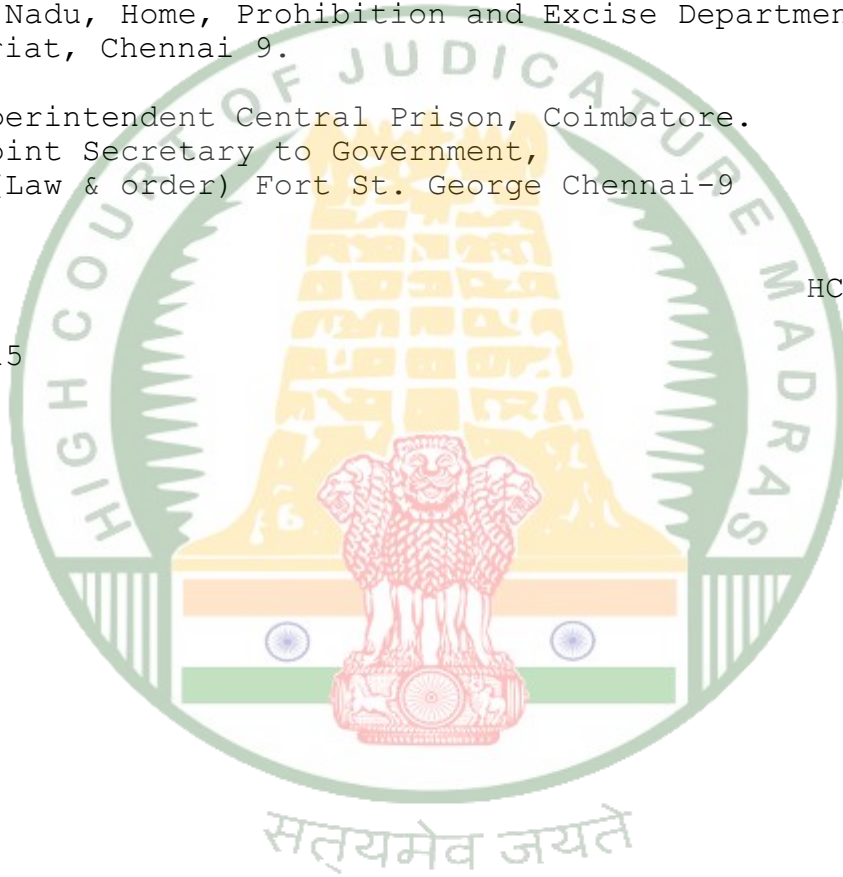
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To

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

TM(CO)
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