IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2015

CORAM:

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

HCP.No.2772 of 2014

Agila Petitioner

Vs

1.The Secretary to Government
Home, Prohibition & Excise Department,
Fort St.George,
Chennai 600009.

2.The Commissioner of Police,
Chennai Police,
Chennai. 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 23.09.2014 in BDFGISSV.No.1355/2014 against the petitioner's husband, Appu @ Uma Maheswaran, male, aged 24 years, S/o Sugumar, who is confined at Central Prison, Vellore and set aside the same and direct the respondents to produce the detenu before the Court and set him at liberty.

For Petitioner :Mr.K.S.Kaviarasu

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

ORDER

WEB COPY

This Habeas Corpus Petition is filed, by the wife of the detenu, namely, Appu @ Uma Maheswaran, aged 24 years, son of Sugumar, to issue a Writ of Habeas Corpus, to call for the records in BDFGISSV No.1355/2014, dated 23.09.2014, 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, Vellore, and to quash the same and to direct the

https://hcservices.ecourts.gov.in/hcservices/

Respondents to produce the body and person of the detenu and set him at liberty forthwith.

2. Even though Mr.K.S.Kaviarasu, the learned counsel for the petitioner raised many grounds, in assailing the impugned order of detention, he confined his arguments only on the ground of non-application of mind on the part of the detaining authority in passing the detention order, which would vitiate the impugned detention order.

3. According to the learned counsel for the petitioner, though the detenu was arrested in the adverse cases, namely (i) Crime No.236/2014 on the file of C-2 Periyapalam Police Station for the offence under sections 147, 148, 341, 302 and 506(ii) IPC and (ii) Crime No.237/2014 on the file of C2, Periyapalam Police Station for the offence under sections 341, 336, 427, 392 r/w 397 and 506(ii) IPC, there is no mention in the grounds of detention whether he has moved bail application in the said adverse cases or not. The Detaining Authority, in paragraph No.4 of the detention order, while referring to the bail application filed in respect of the ground case Crime No.1166/2014, that the detenu has moved bail before the Court of District Principal Sessions, Thiurvallur in Crl.M.P.No.3614/2014 and the same is pending, omitted to refer about the said adverse cases whether he has moved bail or not, 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 is omitted to be mentioned in the detention order whether the detenu has obtained bail or not in the adverse cases.

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.1166/2014, that the detenue has moved bail application before the Principal Sessions Court, Thiruvallur in Crl.M.P.No.3476/2014 and the same is pending, however the detaining authority has omitted to mention about the adverse cases, Crime Nos.236 and 237 of 2014 on the file of C-2, Periyapalam 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 cases or not. 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 cases, the subjective satisfaction arrived at by the detaining authority that there is real

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

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 this Court 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. (Crl.) 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. (Crl.)56: LNIND 2013 MAD 1077: (2013)2 MLJ (Crl) 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.

WEB COPY

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vsi

https://hcservices.ecourts.gov.in/hcservices/

To:

1. The Secretary to Government Secretary to Government
   Home, Prohibition & Excise Department,
   Secretariat,Chennai 600009.

2. The Commissioner of Police,
   Chennai Police, Chennai .

3.The Superintendent
Central Prison,
Vellore

4. The Joint Secretary to Government
Public (Law and order) Department
Fort Saint George
Chennai

5.The Public Prosecutor,
   Madras High Court, Madras

6. The Superintendent
Central Prison,
Puzhal, Chennai

HCP.No.2772 of 2014

KV (CO)
kk 10/4

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/