

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.2976 of 2014

Sakthimani

...Petitioner

Vs

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

2.The Commissioner of Police,
Chennai Police,Vepery,
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 04.10.2014 in BDFGISSV.No.1427/2014 against the petitioner's brother, Senthil @ Senthil Kumar, male, aged 32 years, S/o Chandran, 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

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ORDER

This Habeas Corpus Petition is filed, by the brother of the detenu, namely, Senthil @ Senthil Kumar, aged 32 years, son of Chandran, to issue a Writ of Habeas Corpus, to call for the records in BDFGISSV No.1427/2014, dated 04.10.2014, 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 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 in (i) Crime No.302/2014 on the file of Gingee Police Station for the offence under sections 302 IPC @ 120(b), 302, 201 IPC and (ii) Crime No.433/2014 on the file of G4, Uthiramerur Police Station for the offence under sections 302 IPC @ 120(b), 302, 201 IPC, and in the ground case in Crime No.1562/2014 for the offence under sections 341, 294(b), 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 and ground case. The Detaining Authority, in paragraph No.4 of the detention order, while stating that the detenu was remanded in the ground case in Cr.No.1562/2014 on the file of M-1, Madhavaram Police Station, has not referred to any bail application filed in respect of the said case and the adverse cases viz., Crime No.302/2014 and Crime No.433/2014, 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, the detaining authority, while referring to the ground case in Crime No.1166/2014, has not stated whether the bail application has been filed or not in the ground case as well as in the adverse cases, Cr.No.302/2014 and Cr.No.433/2014. There is no mention in the detention order as to whether any step was taken to move bail application in the ground case and in the adverse cases. 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 ground case and adverse cases, the subjective satisfaction arrived at by the detaining authority that it is very likely of the detenu 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. (Cr1.) 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. (Cr1.)56: LNIND 2013 MAD 1077: (2013)2 MLJ (Cr1) 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 ground case and adverse cases, 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,
Chennai Police, Vepery,
Chennai.
3. The Superintendent, Central Prison,
Vellore.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.
5. The Public Prosecutor,
Madras High Court, Madras

HCP.No.2976 of 2014

RSY (CO)
PSI (07.04.2015)