

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN

and

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.3240/2014

M.Kannammal .. Petitioner/Mother of the Detenu

Vs

1.The Principal Secretary to Government
State of Tamil Nadu, Home,
Prohibition & Excise [XVI] Department
Chennai - 600 009.

2.The District Magistrate & District Collector
Dharmapuri District, Dharmapuri.

3.The Superintendent of Central Prison
Salem, Salem District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records pertaining to the detention order passed in SC.No.25/2014 dated 30.10.2014 on the file of the 2nd respondent herein and set aside the same and direct the respondents herein to produce the detenu Sivaraj, son of Muniyappa Gounder, who is confined in Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.A.Ilayaperumal
For Respondents : Mr.M.Maharaja, APP

ORDER

[Order of the Court was made by S.TAMILVANAN, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in SC.No.25/2014 dated 30.10.2014, whereby the detenu/the son of the petitioner herein, by name Sivaraj, son of Muniyappa Gounder, aged 42 years, was ordered to be detained under the provisions 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 of 1982) branding him as a "Sexual Offender".

2.Though many grounds have been raised in the petition, Mr.A.Ilayaperumal, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3.According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.360/2014 registered by Palacode Police Station and the bail application filed by the detenu twice, viz., before the learned Judicial Magistrate, Palacode, in CMP No.8229/2014 and before the learned Principal District and Sessions Judge, Dharmapuri in CrI.MP.No.3377/2014, were dismissed on 11.10.2014 and 29.10.2014 and the detenu has not moved any further bail application in the ground case as on the date of the passing of the detention order. He would also contend that the detaining authority has arrived at the subjective satisfaction without any basis ; but has merely stated that there is a real possibility of the detenu filing bail application before this Court and get bail. The Detaining Authority also has not mentioned about any similar case particulars for arriving at the subjective satisfaction nor mentioned about the relatives taking steps to file bail application in the said ground case. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail application in the ground case subsequent to the dismissal of the earlier applications twice. When no bail application is filed, there is no real possibility of the detenu coming out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case and there is imminent possibility of the detenu coming out on bail in the said case. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail in the ground case, is a mere ipse dixit without any cogent materials. In support of his contention, he relies on the judgments of the Hon'ble Apex Court reported in [a] 2006 [1] MLJ [CrI.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] ; [b]2005 [1] CTC 577 [VELMURUGAN @ VELU Vs. THE COMMISSIONER OF POLICE] and [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] .

4.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.

5.We have heard the learned counsel for both sides with regard to the facts and citation.

6.As evidenced from paragraph 5 of the grounds in the order of detention, the detenu is in remand in the ground case [Cr.No.360/2014] and he has not filed any further bail application in the said ground case as on the date of passing of the detention order, in furtherance of the dismissal of the earlier bail applications by the Courts below, viz., by the learned Judicial Magistrate, Palacode and by the learned Principal District and Sessions Judge, Dharmapuri, on 11.10.2014 and on 29.10.2014 in Cr.MP.Nos.8229/2014 and 3377/2014. When no bail application is filed, there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail in the ground case without any basis or without any reliable material, would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Therefore on this ground, the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

7.In this connection it is useful to refer the judgment of the Hon'ble Apex Court relied on by the learned counsel for the petitioner.

[a]In 2006 [1] MLJ [Cr1.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] , wherein the Hon'ble Apex Court has held as follows:

"The Courts had rejected the bail applications moved by the appellant and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is mere ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record, in the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention."

[b]In 2005 (1) CTC 577 (Velmurugan @ Velu vs. The Commissioner of Police), it has been held as follows:

"3.....unless there is a clear expression by the detaining authority in the grounds of detention with reference to the imminent possibility of the detenu being released on bail by filing bail application, the detaining authority would not choose to pass the detention order. In order to prevent the detenu from committing the acts, which would be disturbance to public order and public health, the detaining authority shall consider the materials and on the basis of subjective satisfaction that there is imminent possibility of the detenu coming out on bail or likelihood of the detenu being released on bail, the detaining authority may pass such an order under Tamil Nadu Act 14 of 1982. When such an essential requirement, namely, the imminent possibility of the detenu coming out on bail, is absent, it has to be held that the order of detention is vitiated."

[c]In 2012 [7] SCC 181 [cited supra] which reads thus:-
12. In *Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr.*, (2011) 5 SCC 244, this Court while dealing with the issue held :

".....

..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.....

In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground."

(emphasis supplied)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e.

involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

14..... Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law."

8.It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

9.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent 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

सत्यमेव जयते
Sub Assistant Registrar

AP
To

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1.The Principal Secretary to Government
State of Tamil Nadu, Home,
Prohibition & Excise [XVI] Department
Chennai - 600 009.

2.The District Magistrate & District Collector
Dharmapuri District, Dharmapuri.

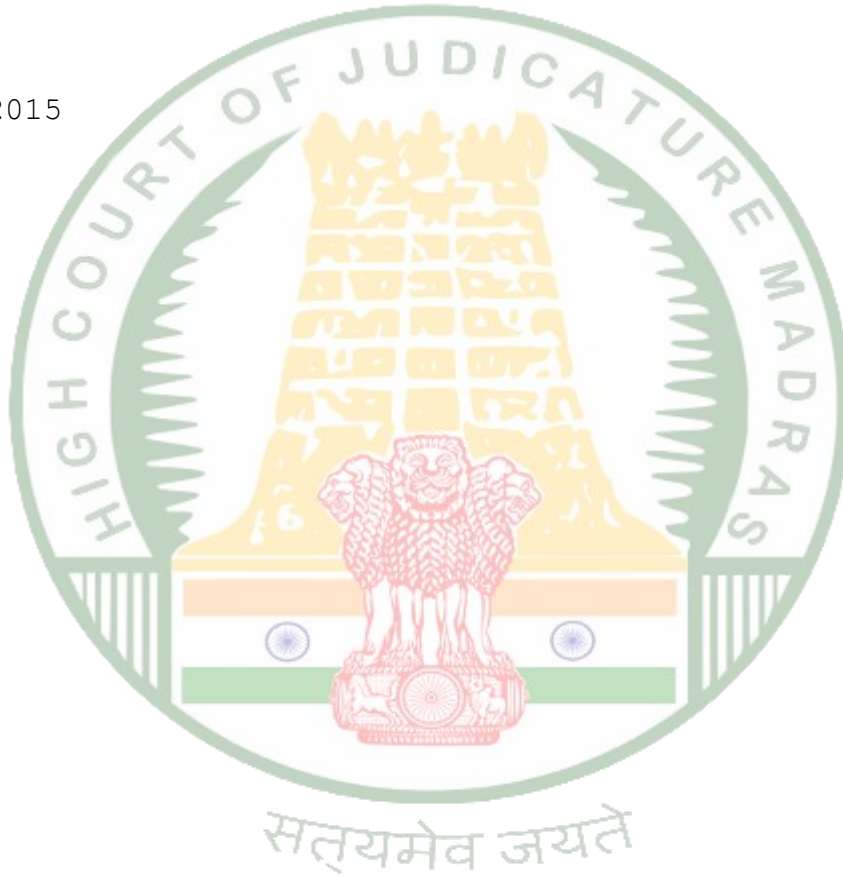
3.The Superintendent of Central Prison
Salem, Salem District.

4.The Joint Secretary to Government
Public (Law & Order)
Fort St.George,Chennai-9

5.The Public Prosecutor, High Court, Madras.

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