

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN  
AND

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

H.C.P.No.3345 of 2014

Kembaraj  
Petitioner

..

Vs

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

2.The District Collector and District Magistrate,  
Krishnagiri District, Krishnagiri.

3.The Inspector of Police,  
Hudco Police Station,  
Hosur, Krishnagiri District.  
Respondents

..

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to call for the records relating to the detention order passed by the second respondent pertaining to the order made in S.C.No.36/2014 dated 08.08.2014 against the detenu, Kembaraj, Son of Nagaraj, male, aged 23 years, who is detained at Central Prison, Salem and set aside the same and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr.R.S.Vaideeswaran

For Respondents : Mr.C.Emalias,  
Additional

Public

Prosecutor .

ORDER

This Habeas Corpus Petition is filed, by the detenu, namely, Kembaraj, aged 23 years, Son of Nagaraj, to issue a Writ of Habeas Corpus, to call for the records, in S.C.No.36/2014 dated 08.08.2014, 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, Salem, to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. Mr.R.S.Vaideeswaran, the learned counsel for the petitioner challenged the impugned detention order on two main grounds, viz. (i) non application of mind on the part of the detaining authority in passing the detention order and (ii) 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 real possibility of the detenu coming out on bail, which would vitiate the impugned detention order.

3. Per contra, Mr.C.Emalias, the learned Additional Public Prosecutor would submit that there is no illegality or infirmity in the impugned order of detention and that the detaining authority has observed that there is real possibility of the detenu coming out on bail and if he comes out on bail, he would indulge in such activities in future, which will be prejudicial to the maintenance of the public order and there is a compelling necessity to detain him under the provisions of Tamil Nadu Act 14 of 1982 and as such, the detaining authority has rightly passed the detention order. However, he admitted that the copy of bail application in similar case, referred to in the grounds of detention was 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 also perused the impugned order of detention and the materials placed on record.

5. In paragraph No.4 of the grounds of detention, though the detaining authority has observed that the detenu has been remanded to judicial custody in the adverse case (Cr.No.232/2014) and in the ground case (Cr.No.241/2014) and that the detenu did not file any bail petition so far in the above said cases, the detaining authority has come to the subjective satisfaction that there is real possibility of the accused coming out on bail. Though it is mentioned by the detaining authority that it is learnt that the relatives of the detenu are taking efforts to move bail applications to take him on bail, there is no particulars or materials produced in this regard. In the absence of any particulars to show that the relatives are taking steps to take him out on bail and that the detenu is likely to come out on bail in the ground case and adverse case, the subjective satisfaction arrived at by the detaining authority that there is real possibility 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.

6. 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.

7. Insofar as non-supply of bail application in the similar case is concerned it is seen from paragraph No.4 of the Grounds of Detention that in similar case, the accused was released on bail by the Principal Sessions Judge, Krishnagiri, vide Crl.M.P.No.403/2012 in respect of Cr.No.228/2011 on the file of Denkanikottai Police Station registered under section 392 IPC. 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.

8. 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)."

9. 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 of detention.

10. 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.

11. 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/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

vsi

To

- 1.The Secretary to Government,  
Home, Prohibition & Excise Department,  
Fort St.George,Chennai 600009
2. The District Collector and District Magistrate,  
Krishnagiri District, Krishnagiri.
3. The Inspector of Police,  
Hudco Police Station,  
Hosur, Krishnagiri District.

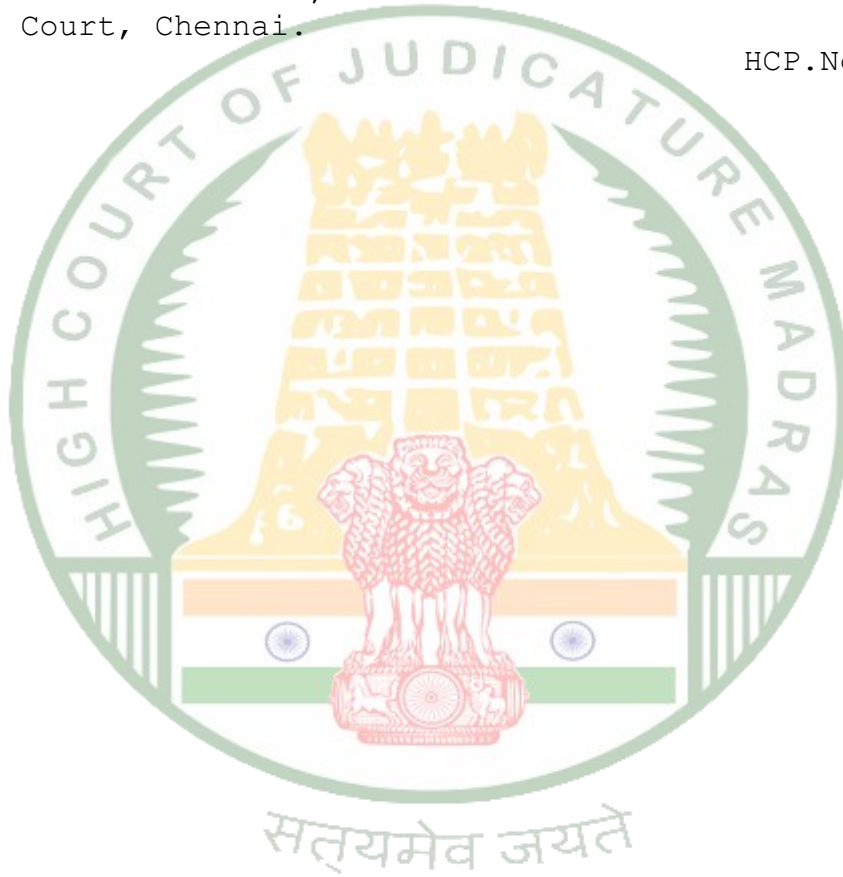
4. The Superintendent  
Central Prison,  
Salem

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

6. The Public Prosecutor,  
High Court, Chennai.

HCP.No.3345 of 2014

KJI (CO)  
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