

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.3374/2014

P.Ganesan

..

Petitioner

Vs.

1.The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Chennai Police, Egmore,
Chennai-8.

Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records in Memo No.1727/2014 by the 2nd respondent on 07.11.2014, set aside the same and direct the respondents to produce the detenu Manikandan, son of Palani, 26 years, who is now detained in Central Prison, Puzhal, Chennai-66 before this Court and set him at liberty.

For Petitioner : Mr.S.Swamidoss Manokaran

For RR1&2 : 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 Memo No.1727/2014 dated 07.11.2014, whereby the brother of the petitioner by name Manikandan, son of Palani, aged 26 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 "GOONDA".

2. As per the grounds of detention dated 07.11.2014, passed by the second respondent, the detenu came to adverse notice in the following cases:

i)Adverse case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	M3 Puzhal PS Cr.No.1187/2014	379 IPC
2	M3 Puzhal PS Cr.No.1820/2014	341, 392, 506[ii] IPC
3	M3 Puzhal PS Cr.No.1844/2014	379, 511 IPC

(ii) Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	M3 Puzhal PS Cr.No.1880/2014	341, 294[b], 336, 427, 392 r/w 397 & 506[ii] IPC

3. Though many grounds have been raised in the petition, Mr.S.Swamidoss Manokaran, 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.

4. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the adverse cases in Cr.Nos.1187/2014, 1820/2014 and 1844/2014 and in the ground case in Cr.No.1880/2014 registered by the M3 Puzhal Police Station and the bail application filed by the detenu in the ground case before the learned Principal District and Sessions Judge, Tiruvallur in CrI.MP.No.4121/2014 was pending and the detenu has not moved any bail application in the adverse cases as on the date of the passing of the detention order. He would also contend that the detaining authority has placed reliance on the statement of the sponsoring authority to the effect that the relatives of the detenu are taking steps to take him out on bail by filing bail applications in the adverse cases. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail application in the adverse cases and the bail application filed in the ground case was pending and he is in remand in the said cases. When no bail application is filed, there is no real possibility of the detenu coming out on bail and when a bail application is pending, then there is no presumption that the detenu would come 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 as well as in the adverse cases and there is no imminent possibility of the detenu coming out on bail in the said cases. The apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out on bail as the bail application filed in the ground case is pending is not justifiable for the reason that he has pre-judged the matter. Concedingly he could not foresee the nature of the order that would be passed by the Court. By the reason of pendency of the application, one could not easily come to the conclusion that the Court would certainly grant bail to the accused. 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 adverse cases and that there is a likelihood of his 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 [Cr1.] 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] ; [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] and [d] 2008 [3] MLJ (Cr1.) 144 [S.ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER].

5.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.

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

7.As could be seen from paragraph 4 of the grounds of detention, the detenu is in remand in the ground case [Cr.No.1880/2014] and in the adverse cases [Cr.Nos.1187/2014, 1820/2014 and 1844/2014] and he has not filed any bail application in the said adverse cases and the bail application filed by the detenu in the ground case in Cr1.MP.No.4121/2014 before the learned Principal District and Sessions Judge, Thiruvallur, was pending as on the date of passing of the detention order. Merely stating that steps have been taken on behalf of the detenu by the relatives of the detenu to file bail applications in the adverse cases is not sufficient to pass an order of detention. Excepting recording a statement that the relatives of the detenu are taking steps to file bail applications, no other material are shown as to the steps taken to file bail applications in the adverse cases. When a bail application is pending, then there is no presumption that the detenu would come out on bail and 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 adverse cases and that there is likelihood of his coming out on bail in the ground case 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. As rightly contended by the learned counsel appearing for the petitioner the pendency of the bail application would not certainly enable the detaining authority to conclude that the Court would certainly grant bail to the accused. It is nothing but pre-judging the matter. Therefore on this ground

also 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.

8. 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 [CrL.] 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."

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."

(emphasis supplied)

[d]In 2008 [3] MLJ (Cr1.) 144 [S.ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER], it has been held as follows:

"Where a bail application filed by the detenu was pending before the Court and the Detaining Authority coming to the conclusion that there was a real possibility of the detenu coming out on bail, even prior to the passing of an order on bail application, held the detention order was passed without proper application of mind, rendering it vitiated."

9.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.

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

11. 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

Sub Assistant Registrar

To

1. The Secretary to the Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
2. The Commissioner of Police,
Chennai Police, Egmore,
Chennai-8.
3. The Superintendent, Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government
Public (L&O) Fort St. George, Chennai.
5. The Public Prosecutor, Madras High Court, Madras

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H.C.P.No.3374/2014

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