

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM:

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

H.C.P.No.3393 of 2014

Pujjamma

... Petitioner

versus

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai 600 009.

2. The District Collector cum District Magistrate,
O/o District Collector,
Krishnagiri,
Krishnagiri District.

... Respondents

Petition filed under Article 226 of the Constitution for the issuance of a Writ of Habeas Corpus, to set aside the order of the detention order passed by the second respondent, dated 05.08.2014, in S.C.No.33/2014 and direct the production of the detenu, I.G.Mani @ Mani, S/o Venkatesh, aged 23 years, detained in Central Prison, Salem, under the Act 14 of 1982, before this Court and set the detenu at liberty.

For petitioner : Mr.R.Baskar
For respondents : Mr.C.Emalias,
Additional Public Prosecutor

O R D E R

This Habeas Corpus Petition is filed, by the mother of the detenu, namely, I.G.Mani @ Mani, S/o Venkatesh, aged 23 years, to issue a Writ of Habeas Corpus, to call for the records, in S.C.No.33/2014 dated 05.08.2014, 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. The learned counsel for the petitioner, besides, assailing the impugned order on various grounds, inviting the attention of this Court to Section 2(f) of the Tamil Nadu Act 14 of 1982, which defines 'Goondas' and Full Bench judgment of this Court reported in 2011 (4) CTC 353 (ARUMUGAM V. STATE OF TAMIL NADU (FB)), followed by Honourable Division Bench judgment of this Court reported in 2012-2-L.W. (Crl.) 532 (K.BALA V. THE STATE OF TAMIL NADU & ANOTHER), submitted that for the solitary act, I.G.Mani @ Mani, S/o Venkatesh, the detenu, cannot be branded as 'Goonda' under the provisions of the said Act. The learned counsel for the Petitioner further submitted that there is non-application of mind, on the part of the Detaining Authority in passing the impugned detention order. He submitted that though the Detaining Authority has stated that the detenu has not moved any bail application so far, but without any cogent material has stated that the relatives of the detenu are taking efforts to take him on bail and that the Detaining Authority has arrived at the conclusion that there is a real possibility of the detenu coming out on bail by filing a bail application 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 hence, there is a compelling necessity to detain the detenu under the provisions of the Tamil Nadu Act 14/1982, in order to prevent him from indulging in such activities in future, which are prejudicial to the maintenance of public order and passed the impugned order of detention and hence, the detention order is vitiated. On these grounds, learned counsel for the petitioner, prayed to set aside the 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 a real possibility of the detenu coming out on bail by filing a bail application 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 hence, there is a compelling necessity to detain the detenu under the provisions of the Tamil Nadu Act 14/1982, in order to prevent him from indulging in such activities in future, which are prejudicial to the maintenance of public order and as such, the detaining authority has rightly passed the impugned detention order.

4. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

5. The perusal of the impugned order of detention would reveal that the detenu is in remand in Cr.No.370/2014 on the file of Denkanikottai in Royakottai Police Station and that the detenu has not filed any bail application. But, the detaining authority,

without any cogent material available on record has stated that the relatives of the detenu are taking steps to take him on bail and has arrived at the conclusion that there is a real possibility for the detenu to come out on bail, by filing a bail application. Merely stating that steps have been taken on behalf of the detenu by the relatives of the detenu to file bail applications is not sufficient to pass an order of detention. Except the statement that the relatives of the detenu are taking steps to file bail applications, there is no other material as to the steps taken to file bail applications. When no bail application is filed, there is no real possibility of the detenu coming out on bail. The above finding of the detaining authority is based on mere surmises and conjectures. In the absence of any materials on record, on the basis of which, the detaining authority could be satisfied that the detenu was likely to be released on bail, the mere ipse-dixit of the detaining authority is not sufficient to sustain the order of detention and would vitiate the impugned 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.

6. It has been held by the Honourable Supreme Court in T.V.Saravanan Vs. State (2006-2-SCC-664) and A.Shanti Vs. Government of Tamil Nadu (2006-9-SCC-711) that if no bail application was pending and the detenu was already, in fact, in jail in a criminal case, the detention order under the preventive detention law is illegal. These decisions appear to have followed the Constitution Bench's decision in Haradhan Saha Vs. State of WB (1975-3-SCC-198), wherein it has been observed as under:-

"34. ... where the person concerned is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the Detaining Authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State of public order".

7. In Abdul Sathar Ibrahim Mani Vs. Union of India (AIR-1991-SC-2261), it is held as follows:-

"Where the detenu was in custody at the time of passing an order of detention what is strictly required is whether the detaining authority was aware of the fact that the detenu was in custody, and if so was there any material to show that there were compelling reasons to order detention in spite of his being in custody. These aspects assume importance because of the fact that a person who is already in custody is disabled from indulging in any prejudicial activities and as such the detention order may not normally be necessary.

Therefore, the law requires that these two tests have to be satisfied in the case of such detention of a person in custody."

8. In yet another decision of the Honourable Supreme Court reported in Ramesh Yadav Vs. District Magistrate, Etah and others (AIR-1986-SC-315), the Honourable Supreme Court has observed as follows:-

"Where the order of detention was passed because the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area, the same was not proper. If the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. Merely on the ground that an accused in detention as an under trial prisoner was likely to get bail, an order of detention under the Act should not ordinarily be passed."

9. In Chelladurai Vs. State of Tamil Nadu (2009-3-MLJ-Crl-790-Mad), this court has observed that there is no material on record to come to a definite conclusion that there is real possibility of detenu coming out on bail by filing bail application and the conclusion of the detaining authority is not based on any material and shows non application of mind. In yet another decision of this court rendered in the case of D.Sivasakthi Vs. District Collector and District Magistrate (2009-3-MLJ-Crl-836-Mad), the same view was expressed and the detention was quashed on the said ground.

10. The principles laid down in the decisions cited supra are squarely applicable to the facts of the present case. The detaining authority, before passing the detention order, must satisfy themselves that there is a real possibility of the detenu coming out on bail and that satisfaction ought to be reached on cogent material. In this case also, the detaining authority, in the absence of any cogent material available on record, has inferred that the detenu would be released on bail and if he is released on bail, he would indulge in such activities in future, which are prejudicial to the maintenance of public order. There must be cogent material before passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse-dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail application is not a cogent material.

11. Applying the proposition laid down in the above Larger

Bench case, recourse to preventive detention law when ordinary law of land can deal with a situation, renders the detention illegal. Further, the reported single act in this case, does not have the propensity of affecting the even tempo of life and public tranquillity being prejudicial to the maintenance of public order.

12. Further, the solitary incident would not manifest the potentialities of a detenu in such activities. There is no conclusion that this incident would give rise to communal tension and apprehension of outbreak of list affecting public order. It is an act confined to only to a few individual directly involved as distinct from a wide spectrum of the public and it could cause problem of law and order only.

13. Further, the State has not placed any material to prove that the detenu had come to adverse notice in more than one case. In the light of the above said principles laid down by the Honourable Supreme Court and this Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

14. 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

//True Copy//

vsi

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George, Chennai 600 009.
2. The District Collector cum District Magistrate,
O/o District Collector,
Krishnagiri, Krishnagiri District.
3. ThePublic Prosecutor,
High Court, Madras.
4. The Superintendent Central Prison, Salem

+1cc to Mr.R.Baskar, Advocate, S.R.No.12192

ALA(CO)
CA(27/03/2015)

H.C.P.No.3393 of 2014