

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM:

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

HCP.No.3632 of 2014

R.Settu .. Petitioner

Vs

- 1.The State of Tamil Nadu rep. by its Secretary to Government  
Home, Prohibition & Excise Department, Fort St.George  
Chennai 600009
- 2.The District Collector and District Magistrate,  
Krishnagiri, Krishnagiri District.  
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 19.06.2014 in S.C.No.20/2014 against the petitioner's brother, R.Muthu, son of Raja, aged 23 years, who is confined at Central Prison, Vellore, and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.M.Babu  
For Respondents : Mr.C.Emalias,  
Additional Public Prosecutor .

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ORDER

This Habeas Corpus Petition is filed, by the brother of the detenu, R.Muthu, son of Raja, aged 23 years, to issue a Writ of Habeas Corpus, to call for the records, in S.C.No.20/2014, dated 19.06.2014, 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 to set him at liberty forthwith.

2. Though several grounds have been raised in this Habeas Corpus Petition, the learned counsel for the Petitioner has confined his argument only in respect of non-application of mind, on the part of the Detaining Authority in passing the impugned detention order, inasmuch as though the Detaining Authority has stated that the detenu has not moved any bail application so far, without any cogent material, the detaining authority has stated that the relatives of the detenu are taking steps to take him on bail; the Detaining Authority has arrived at the conclusion that there is a real possibility of the detenu coming out on bail by filing bail applications before the higher courts, and that 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 same is vitiated.

3. Per contra, 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.Nos.232/2014, 234/2014 and 81/2014 and that the detenu has not filed any bail application. But, the detaining authority, without any cogent material available on record and by relying on the statement of the Sponsoring Authority that the relatives of the detenu are taking steps to take him on bail, has arrived at the conclusion that there is a real possibility for the detenu to come out on bail, by filing bail applications before the higher courts. Merely stating that steps have been taken on behalf of the detenu by his relatives 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 and detention order based on such material is liable to be quashed.

11. 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.

12. 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.

vsi/g.s.

-s/d-  
Assistant Registrar(J)  
Dt:8/4/2015

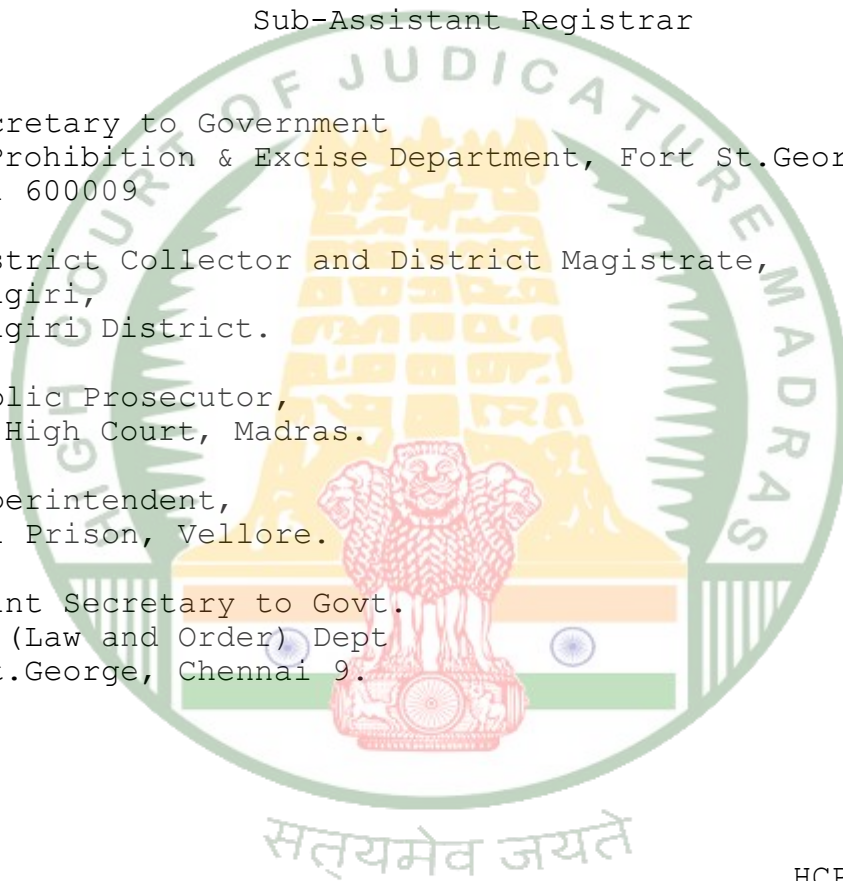
True Copy

Sub-Assistant Registrar

To:

1. The Secretary to Government  
Home, Prohibition & Excise Department, Fort St.George  
Chennai 600009
2. The District Collector and District Magistrate,  
Krishnagiri,  
Krishnagiri District.
3. The Public Prosecutor,  
Madras High Court, Madras.
4. The Superintendent,  
Central Prison, Vellore.
5. The Joint Secretary to Govt.  
Public (Law and Order) Dept  
Fort St.George, Chennai 9.

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