

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.04.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.3679/2014

Tmt.Bathulla

Vs

.. Petitioner

1.The Commissioner of Police
O/o.The Commissioner
of Police, Egmore, Chennai.

2.The Secretary to the Government
Government of Tamil Nadu
Home, Prohibition & Excise Department
Chief Secretariat, Fort St George,
Chennai 600 009.

3.The Superintendent
Central Prison, Puzhal, Chennai.

.. 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 order of detention passed by the 1st respondent herein and made in No.1653/BDFGISSV/2014 dated 30.10.2014 and to set aside the same and directing the 3rd respondent to produce the body of the detenu Thiru Aejaaz Hussain son of Chan Basha aged about 29 years now confined in Central Prison, Puzhal, Chennai before this Court and thereby setting him at liberty.

For Petitioner : Mr.M.Shajahan
For Respondents : Mr.M.Maharaja,APP

ORDER

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

The above petition was closed as infructuous on 20.04.2015, on the representation of the learned Additional Public Prosecutor that the detention order was revoked by the Government vide order dated 19.01.2015. But, it is

not so. Hence, the learned counsel for the petitioner made a mention before this Court and hence, this petition was posted on 27.04.2015 under the caption "For being mentioned" and is disposed of today by the following order.

2.Challenge is made to the order of detention passed by the second respondent vide Proceedings in Memo No.1653/BDFGISSV/2014 dated 30.10.2014, whereby the detenu/the son of the petitioner herein, by name, Aejaz Hussain son of Chan Basha aged about 29 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".

2a.Though many grounds have been raised in the petition, Mr.M.Shajahan, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the bail applications in the similar cases, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention.

3.Per contra, Mr.M.Maharaja, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned

order of detention. However, he submitted that the copy of the bail applications in the similar cases, referred to in the grounds of detention were 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 thoroughly scanned through the impugned detention order and the entire materials available on record.

5.It is seen from paragraph No.4 of the Grounds of Detention that in similar cases, viz., [a]the accused was released on bail by the learned 13th Metropolitan Magistrate, Egmore, Chennai in CrI.MP.No.2482/2012 in respect of the case in Cr.No.562/2012 for the alleged offence u/s.379 IPC on the file of the D4 Zam Bazaar Police Station ; and [b] the accused were released on bail by the learned Principal Sessions Judge, Chennai in CrI.MP.No.11017/2014 in respect of the case in Cr.No.551/2014 for the alleged offences u/s.341, 323, 326, 392, 397 & 506[ii] IPC on the file of G1 Vepery Police Station respectively. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain any of the documents, viz., the bail applications, in respect of the similar cases. The said bail applications filed in similar cases were the documents relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such documents have 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 applications and other documents in similar cases to the detenu would vitiate the impugned detention order. This order is made only towards setting aside the order of detention passed against the detenu herein. Any bail applications moved by the detenu in the ground case or in the adverse cases, necessarily would have to be considered by the Court concerned solely on merits.

6. 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 applications 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)."

7. This Court in **Jarinabegam Vs. State of Tamil Nadu by Secretary to Government, Prohibition and Exercise Department, Chennai and another (2007-1-MLJ-Cri-18)** relying upon the decision of the Honourable Supreme Court cited supra has held that non supply of the copy of the bail applications in similar cases to the detenu has the effect of vitiating the order of detention.

8. As already analysed by us, in the facts and circumstances of the

present case, non-supply of the documents, viz., bail applications, in similar cases, to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such a vital document, the detenu has lost valuable right to make an effective representation to the authorities concerned.

9. 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.

10. 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.

[S.T.J.,] [B.R.,J.]
29.04.2015

NOTE: Issue order copy on 30.4.2015.
AP

To

1. The Commissioner of Police
O/o. The Commissioner
of Police, Egmore, Chennai.
2. The Secretary to the Government
Government of Tamil Nadu
Home, Prohibition & Excise Department
Chief Secretariat, Fort St George, Chennai 600 009.
3. The Superintendent
Central Prison, Puzhal, Chennai.
4. THE PUBLIC PROSECUTOR,
HIGH COURT, CHENNAI.

S.TAMILVANAN, J.

AND
B.RAJENDRAN, J.

AP

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