IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

H.C.P.No.3732/2014

Rajkumar .. Petitioner

Vs

1.The Secretary to Government
State of Tamil Nadu, Home
Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Chennai Police, Chennai 600 008. .. Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a writ of habeas corpus calling for the entire records relating to the petitioner's detention under Tamil Nadu Act 14 of 1982 vide detention order dated 03.12.2014 on the file of the 2nd respondent herein made in proceedings No.2064/2014 and quash the same as illegal and consequently direct the respondents herein to produce the said petitioner namely Rajkumar, son of Ekambaram, aged 27 years, before this Court and set the petitioner at liberty from detention now petitioner detained at Central Prison, Puzhal, Chennai 600 066.

For Petitioner : Mr.C.C.Chellappan
For Respondents : Mr.M.Maharaja,APP

ORDER

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[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 No.2064/2014 dated 03.12.2014, whereby the detenu/the petitioner herein 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”.

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2.Though many grounds have been raised in the petition, Mr.C.C.Chellappan, 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 Principal Sessions Judge, Chennai, in Crl.MP.No.929/2013 for the offence u/s.341, 294[b], 336, 427, 397 & 506[ii] IPC in Cr.No.160/2013 on the file of V5 Thirumangalam Police Station ; and [b] the accused was released on bail by the learned V Metropolitan Magistrate, Egmore, Chennai, in Crl.MP.No.460/2013 for the offence u/s.384 & 506[ii] IPC in Cr.No.164/2013 on the file of K3 Aminjikarai Police Station respectively. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain the documents, viz., the bail applications, in respect of the similar cases ; but the respective bail orders of the said similar cases [both in English version and in vernacular version] has been furnished in page Nos.78 to 83 of the Booklet. 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.

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 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

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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-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/bail order copy in similar case to the detenu has the effect of vitiating the order or detention.

8. As already analysed by us, in the facts and circumstances of the present case, non-supply of the documents, viz., bail applications etc., in similar cases, to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such a vital documents, 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.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

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To
1.The Secretary to Government
State of Tamil Nadu, Home
Prohibition & Excise Department
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Chennai Police, Chennai 600 008.

3. THE PUBLIC PROSECUTOR, HIGH COURT, CHENNAI.

4.The Superintendent of Central Prison,
Puzhal, Chennai.

5. The Joint Secretary to Government Public
(Law & order), Fort St. George, Chennai. 600 009.

HCP.No.3732/2014

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