

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2016

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN
AND
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

HABEAS CORPUS PETITION NO. 1912 OF 2015

K.Arivu @ Arivazhagan ... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by the Secretary to Government
Home, Prohibition and Excise Department
Secretariat
Chennai-600 009.

2.The District Collector and
District Magistrate
Villupuram District
Villupuram.

3.The Superintendent
Central Prison
Vellore.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to call for the records of the 2nd respondent relating to the petitioner's detention under Tamil Nadu Act 14 of 1982, vide Detention Order, dated 29.06.2015, made in proceedings No.C2/12148/2015, and quash the same and consequently to direct the respondents herein to produce the petitioner viz., K.Arivu @ Arivazhagan, S/o.Kandan Udayar, aged 28 years, now confined in Central Prison, Vellore, before this Court and to set him at liberty.

For Petitioner : Mr.A.Sirrajudeen
Senior Counsel
for Mr.D.Balaji

For Respondents: Mr.A.N.Thambidurai
Addl. Public Prosecutor

O R D E R

(The Order of the Court was delivered by S.NAGAMUTHU,J.)

Challenging the order of detention of the petitioner/detenu, namely, K.Arivu @ Arivazhagan, S/o.Kandan Udayar, aged 28 years, vide Detention Order, dated 29.06.2015, made in proceedings No.C2/12148/2015, detaining

him as a "Goonda", in exercise of the powers conferred under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) (for short, "The Act"), the petitioner/detenu has come up with this Habeas Corpus Petition.

2. According to the Detention Order, the petitioner/detenu is a resident of Thirowpathi Amman Koil Street, Keezhperumpakkam, Villupuram Town and Taluk, Villupuram District. He has been facing several criminal cases. His elder brother one R.K.Siva, a notorious criminal, was murdered by his enemies in the year 2004, at Tindivanam. The petitioner/detenu came to know that his elder brother R.K.Siva was murdered, as per the plan hatched by one Pathar Selvam. Due to the above rivalry, one Prabu, Murugan, Santhosh, R.K.Narayanan, were also murdered. In the year 2012, the petitioner and his associates murdered one Soundar and in the year 2013, the petitioner and his associates murdered one Kesavan in his house at Keezhperumbakkam. On account of the above rivalry, the petitioner came to know that the said Pathar Selvam had made several attempts to murder him. So, the petitioner wanted to eliminate him.

3. For the execution of the above plan, the petitioner had arranged, one Murali, Surendar, Nelson, Kathiravan, Deni @ Jenis Manivarma, Seenuvasan. On 20.04.2015, they conspired to commit murder of Pathar Selvam. On 21.04.2015, at 4.00 a.m., the petitioner/detenu, Murali and Deni @ Jenis, came to the Villupuram Municipal Park in a motor-cycle and parked the vehicle near the park and hiding there. Manivarma, Nelson and Kathiravan came there in another motor-cycle and parked their vehicle. Manivarma was asked to be in the Pondy Road and to inform the arrival of Pathar Selvam. All of them were carrying Veecharuval and they were waiting for Pathar Selvam. At about 6.45 am., Manivarma informed the arrival of Pathar Selvam. Pathar Selvam came into the park and watched the game played by his friends. All the above persons went behind him. The petitioner, with an intention to murder him, cut him with Veecharuval on the left side of his head. On receiving the blow, Pathar Selvam fell down. All the others surrounded him and attacked him indiscriminately. Then they fled away from the scene of occurrence. While leaving, in order to terrorize the public, the petitioner severed the head from the body of Pathar Selvam and carrying the head of Pathar Selvam in one hand, Veecharuval in another hand, the petitioner walked upto Gandhi statue in Villupuram-Pondy Road and placed the head under the Gandhi statue. The general public, who had seen this, ran here and there, due to fear. The vehicular traffic was paralysed in that area for some time. The vendors closed the shutters due to fear. The petitioner, then, surrendered before the Villupuram Town Police Station, along with

Veecharuval. On the complaint of one Bhuvaneswari, who is the wife of the deceased Pathar Selvam, a case in Crime No.148 of 2015 was registered on the file of the Villupuram Town Police Station, for the offences under Sections 147, 148 and 302 IPC. In connection with the said case, the petitioner was arrested and remanded to judicial custody. The severed head was recovered, on being identified by the petitioner.

4. When the investigation was in progress, the Sponsoring Authority made a request to the 2nd respondent herein, to pass orders, to detain the petitioner, by way of preventive detention for the period of one year, under Section 3(1) of the Act. According to the Sponsoring Authority, the relatives of the petitioner were taking steps to take him out on bail. Thus, there was a real possibility of him coming out on bail. In case, the petitioner comes out on bail, it would be prejudicial to the maintenance of public peace and public order. Further, according to the Sponsoring Authority, the recourse to normal criminal law will not have the desired effect of, effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public peace and public order. Having considered all the materials placed before him, the 2nd respondent, viz., the Detaining Authority, has passed the impugned order of detention on 29.06.2015. In pursuance of the same, the petitioner was detained in Central Prison, Vellore. Aggrieved over the same, the petitioner is now before this Court with this Habeas Corpus Petition.

5. We have heard Mr.A.Sirajudeen, the learned senior counsel appearing for the petitioner; Mr.A.N.Thambidurai, the learned Additional Public Prosecutor appearing for the State; and we have also perused the records carefully.

6. In this petition, the petitioner/detenu has raised only three grounds by way of challenge to the impugned order. The first ground is that in connection with the ground case in Crime No.148 of 2015, he was remanded to judicial custody on 21.04.2015. However, he did not file any application before any Court seeking bail. When that be so, there was no real possibility for him to come out on bail. But, the Detaining Authority has stated that his relatives were taking steps to move an application for bail before the competent Court and to take him out on bail. The learned senior counsel for the petitioner would submit that this conclusion arrived at by the Detaining Authority is without any basis. But, the learned Additional Public Prosecutor would submit that though the petitioner had not filed any application seeking bail, according to the Detaining Authority, the relatives of the petitioner were taking steps to file an application for bail before the competent Court and therefore, there was real possibility of the petitioner coming out on bail in the event, he filed any application seeking bail.

7. In our considered view, the petitioner has no case on this ground. Of course, it is true that the petitioner did not move any application for bail. But, he has not made any representation that he was not in a mood to move any application for bail and his relatives were also not taking any steps for moving for bail. Even in the affidavit filed in support of the petition, he has not stated that his relatives were not taking any steps to file any application for bail. From the records, it is clear that in all the cases, in which, he was involved, he had moved applications for bail. Going by the past experience, where the petitioner had moved for bail in the other cases, it cannot be said that the Detaining Authority was not right in coming to the conclusion that the relatives of the petitioner were taking steps to move for bail. In the event of any such application for bail is moved, there is every likelihood of him coming out on bail. Therefore, the first ground raised by the petitioner has no substance and therefore, the same is rejected.

8. The second ground raised by the petitioner is that similarly placed accused were all released on bail. The contention of the learned senior counsel for the petitioner is that in similar cases, the accused were released on bail under Section 167 (2) of the Cr.P.C. But, the copies of the bail application filed by the similarly placed accused have not been supplied to the petitioner/detenu.

9. In this regard, we have to state that the purpose of supplying copy of the bail application is to enable the detenu to make an effective representation questioning the detention order, if so advised. But, in this case, the petitioner has not stated that he made any such representation to the Government questioning the correctness of the detention order. Even in this petition, it is not his case that because the copies of the bail application filed by the similarly placed accused were not supplied to him, he was prevented from making any such representation. He has not stated that he was prejudiced by the non-supply of the copies of the bail application filed by the similarly placed accused. Therefore, this ground raised by the petitioner is also rejected.

10. The third and last ground raised by the petitioner is that the copy of the order passed by the jurisdictional Magistrate extending remand of the petitioner/accused was not supplied to him. In our considered view, whenever the remand period was extended by the Magistrate under Section 167 Cr.P.C., the same would have been done only after affording sufficient opportunity to the petitioner/accused and the order of extension of remand would have been made known to the accused immediately, therefore, it is not as though the petitioner was not aware of the orders of the learned Magistrate extending his remand periodically under Section 167 Cr.P.C. Thus, we do not find any substance in this ground also. The petitioner/detenu has not raised any other ground

in the petition. Thus, we do not find any merit at all in this petition. This Habeas Corpus Petition is, therefore, dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
State of Tamil Nadu
Home, Prohibition and Excise Department
Secretariat
Chennai-600 009.
 - 2.The District Collector and District Magistrate
Villupuram District
Villupuram.
 - 3.The Superintendent
Central Prison
Vellore.
 - 4.The Public Prosecutor,
High Court, Chennai.
- + 1 cc to Mr.D. Balaji, Advocate Sr.25011

H.C.P. No.1912 of 2015

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