IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.1929 of 2015

Joseph ... Petitioner

Vs

1.The State of Tamil Nadu
Rep. By its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Police,
Chennai City Police,
Commissioner Office,
Egmore, Chennai - 600 008.

3.The Inspector of Police,
G-7, Chetpet Police Station,
Chennai. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a WRIT OF HABEAS CORPUS calling for the entire records relating to the impugned order in BDFGISSV No.525/2015 dated 13.07.2015 on the file of the second respondent herein and set aside the same as illegal and direct to the respondents to produce the detenue Kornal Babu @ Babu @ Ravi son of Joseph, aged about 34 years, now confirned at central prison, Puzhal, Chennai, before this Court and set him at liberty.

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For Petitioner : Mr.Ilayaraja Kandasamy

For Respondents : Mr.A.N.Thambidurai,
Additional Public Prosecutor

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ORDER

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

Challenging the detention order in BDFGISSV No.525/2015 dated 13.07.2015, detaining one Mr.Kornal Babu @ Babu @ Ravi, Male aged 34, s/o Joseph, 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", the petitioner who is the father of the detenu is before this Court with this petition.

2. As per the grounds of detention dated 13.07.2015, passed by the second respondent, the detenu came to adverse notice in the following cases:

Adverse Cases:

Sl No.	Name of the Police station and Crime No.	Section of law
1	G.7 Chetpet Police Station, Cr.No.584/2013	379 I.P.C.,
2	G.7 Chetpet Police Station, Cr.No.565/2014	379 I.P.C.,
3	G.7 Chetpet Police Station, Cr.No.1367/2014	379 I.P.C.,
4	G.7 Chetpet Police Station, Cr.No.697/2015	341, 323, 294(b), 336, 392, 397 and 506(ii) I.P.C.,

Ground Case:

Sl No.	Name of the Police station and Crime No.	Section of law
1	G.7 Chetpet Police Station, Cr.No.706/2015	341, 294(b), 323, 336, 427, 392, 397 and 506(ii) I.P.C.,

3.Though many grounds have been raised in the petition, Mr.Ilayaraja Kandasamy, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.706/2015 registered by G.7, Chetpet Police Station,

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Chennai and the bail application filed by him in the said case before the learned Principal Sessions Judge, Chennai was pending as on the date of the passing of the detention order. But, the Detaining Authority has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the said cases by relying upon the similar case registered at G.7 Chetpet Police Station, Crime No.697/2015 u/s.341, 323, 294(b), 336, 392, 397 and 506(ii) I.P.C., wherein bail was granted by the learned Principal Sessions Judge, Chennai. The said similar case is not that of the co-accused of the detenu. The learned counsel would add that admittedly, in this case, the bail application filed by the detenu in the ground case was pending and he is in remand in the said case. When a bail application is pending, there is no presumption that he would come out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case and there is imminent possibility of the detenu coming out on bail in the said case. The apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out on bail as the bail application in the ground case is pending is not justifiable for the reason that he has pre-judged the matter. Concedingly he could not foresee the nature of the order that would be passed by the Court. By the reason of pendency of the application, one could not easily come to the conclusion that the Court would certainly grant bail to the accused. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that is likelihood of the detenu coming out on bail in the ground case is a mere ipse dixit without any cogent materials.

5.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6.We have heard the learned counsel for both sides with regard to the facts and citation.

7.Before adverting to the arguments of the counsel for both sides, we would like to reproduce the relevant portion of the grounds of the detention order, viz., paragraph 4, on which much reliance has been placed by the learned counsel appearing for the petitioner:

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"4.I am aware that Thiru.Kornal Babu @ Babu @ Ravi is in remand in G.7 Chetpet Police Station, Cr.Nos.584/2013, 1367/2014, 697/2015 and 706/2015 and he moved three bail applications before the 14th Metropolitan Magistrate Court, Egmore, Chennai in Crl.M.P.Nos.654/2015, 656/2014 and 655/2015 for G.7 ChetPet Police Station Cr.Nos.584/2013, 565/2014 and 1367/2014 and bail was granted on 10.07.2015 but he has not executed the bond for the value of Rs.5000/- and produced sureities before the Hon'ble IV th Metropolitan Magistrate Court, Egmore, Chennai till 13.07.2015. Hence, remand extension was made till 16.07.2015. Further, two bail applications were moved before the Principal Sessions Court, Chennai in Crl.M.P.Nos.696/2015 and 706/2015 and the same were pending. In a case registered at G.7 Chetpet Police Station, Cr.No.697/2015 registered under Sections 341, 323, 294(b), 336, 392, 397 and 506(ii) I.P.C., bail was grnated by the Principal Sessions Court, Chennai in Crl.M.P.No.8115/2015 to his co-accused. Hence, I infer that it is very likely of coming out on bail in G.7 Chetpet Police Station Cr.Nos.697/2015 and 706/2015since in similar cases bails are grnated by courts after a lapse of time. If he comes out on bail, he will indulge in such further activities in future and therefore there is a compelling necessity to pass an order of detention with a view to prevent him from indulging in such prejudicial activities in future. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him form indulging in such activities, which are prejudicial to the maintenance of public order. On the above materials placed before me, I am fully satisifed that the said Thiru.Kornal Babu @ Babu @ Ravi is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982."

8.As could be seen from the above ground in the order of detention, the detenu is in remand in the ground case

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[Cr.No.706/2015] and the bail application filed by the detenu before the learned Principal Sessions Judge, Chennai, was pending as on the date of passing of the detention order. When a bail application is pending, then there is no presumption that the detenu would come out on bail. But, the subjective satisfaction arrived at by the detaining authority that there is a likelihood of his coming out on bail in the ground case would be a mere ipse dixit as the similar case particulars referred to and relied by the Detaining Authority is not that of the co-accused. If that be so, the order of detention is vitiated and it is indicative of non-application of mind on the part of the Detaining Authority. Further, as rightly contended by the learned counsel appearing for the petitioner the pendency of the bail application would not certainly enable the detaining authority to conclude that the Court would certainly grant bail to the accused. It is nothing but pre-judging the matter. Therefore, on this ground also the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

9.In this connection it is useful to refer the judgment of the Hon'ble Apex Court relied on by the learned counsel for the petitioner.

[a]In 2006 [1] MLJ [Crl.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] , wherein the Hon'ble Apex Court has held as follows:

> "The Courts had rejected the bail applications moved by the appellant and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is mere ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record, in the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention."

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[b]In 2005 (1) CTC 577 (Velmurugan @ Velu vs. The Commissioner of Police), it has been held as follows:

> "3.....unless there is a clear expression by the detaining authority in the grounds of detention with reference to the imminent possibility of the detenu being released on bail by filing bail application, the detaining authority would not choose to pass the detention order. In order to prevent the detenu from committing the acts, which would be disturbance to public order and public health, the detaining authority shall consider the materials and on the basis of subjective satisfaction that there is imminent possibility of the detenu coming out on bail or likelihood of the detenu being released on bail, the detaining authority may pass such an order under Tamil Nadu Act 14 of 1982. When such an essential requirement, namely, the imminent possibility of the detenu coming out on bail, is absent, it has to be held that the order of detention is vitiated."

[c]In 2012 [7] SCC 181 [cited supra] which reads thus:-

> "12. In Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr., (2011) 5 SCC 244, this Court while dealing with the issue held :
>
> "……
>
> In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail……. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored……

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In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground."

(emphasis supplied)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

14.In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co- accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law."

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10.It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

11.In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned grounds.

12. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order in No.525/2015 dated 13.07.2015 passed by the second respondent 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(CS II)

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Sub Assistant Registrar

jbm

To
1.The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai - 600 009.

2.The Commissioner of Police,
Chennai City Police,
Commissioner Office,
Egmore, Chennai - 600 008.

3.The Inspector of Police,
G-7, Chetpet Police Station,
Chennai.

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

5.The Public Prosecutor,
High Court, Madras.

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