

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2016

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

H.C.P.No.2085/2015

Suriyan

.. Petitioner

Vs

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

2.The District Collector and
District Magistrate,
Salem Post, Salem District.

.. 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 relating to the second respondent pertaining to the detention order made in C.M.P. No.32/B.L.A./C2/2015 dated 10.08.2015 in detaining the detenu under Section 2(b) of the Tamil Nadu Act 14/1982 as "Bootlegger" and quash the same and direct the respondents to produce the said detenu namely Kannan, S/o.Periasamy, aged about 44 years, who is detained at Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.D.Veerasekaran

For Respondents सत्यमेव जयते: Mr.A.N.Thambidurai, APP

ORDER

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

Challenge is made to the order of detention passed by the second respondent vide C.M.P. No.32/B.L.A./C2/2015 dated 10.08.2015, whereby the detenu, by name, Kannan, S/o.Periasamy, aged about 44 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 "Bootlegger".

2. Though many grounds have been raised in the petition, Mr.D.Veerasekaran, 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.

3. According to the learned counsel appearing for the petitioner, the detenu has been in remand in the ground case in Cr.No.335/2015 and in the 1st adverse case in Cr.No.305/2015 registered by Attur P.E.W. and the bail application filed by him in the ground case before the Principal Sessions Judge, Salem in CrI.MP. No.2197/2015 was allowed on 16.07.2015 and the bail application moved by the detenu in the 1st adverse case before the Principal Sessions Judge, Salem in CrI.MP.No.2303/2015 was dismissed on 28.07.2015 and the detenu has not moved any further bail application in the said case as on the date of the passing of the detention order. But the detaining authority has arrived at the subjective satisfaction that the detenu would be granted bail in the 1st adverse case by placing reliance on his ground case registered at Attur P.E.W. Cr.No.335/2015 for the offence u/s.4[1][aaa], 4[1-A] Tamil Nadu Prohibition Act, wherein bail was granted to the detenu by the Principal Sessions Judge, Salem in C.MP.No.2197/2015 on 16.07.2015. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail application in the 1st adverse case in furtherance of the dismissal of the earlier bail application by the Court concerned. When no bail application is filed, there is no real possibility of the detenu coming 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 1st adverse case and there is imminent possibility of the detenu coming out on bail in the said case. 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 there is real possibility of the detenu coming out on bail in the 1st adverse case, is a mere ipse dixit without any cogent materials. In support of his contention, he relies on the judgments of the Hon'ble Apex Court reported in [a] 2006 [1] MLJ [CrI.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] ; [b]2005 [1] CTC 577 [VELMURUGAN @ VELU Vs. THE COMMISSIONER OF POLICE] and [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] .

4. 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.

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

6.As could be seen from paragraph 4 of the grounds in the order of detention, the detenu is in remand in the ground case [Cr.No.335/2015] and in the 1st adverse case [Cr.No.305/2015] and the detenu was granted bail in the ground case before the Principal Sessions Judge, Salem in CrI.MP. No.2197/2015 on 16.07.2015 and he has not filed any further bail application in the 1st adverse case as on the date of passing of the detention order, subsequent to the dismissal of the earlier bail application by the Principal Sessions Judge, Salem in CrI.MP.No.2303/2015 on 28.07.2015. When no bail application is filed, there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail in the 1st adverse case based on a similar case, would be a mere ipse dixit and that would vitiate the 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 alone 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.

7.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 [CrI.] 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."

[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 :

"..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored....."

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."

14..... 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."

8.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.

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

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order 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 (CCC)

True copy

Sub Assistant Registrar.

To

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

2.The District Collector and
District Magistrate,
Salem Post, Salem District.

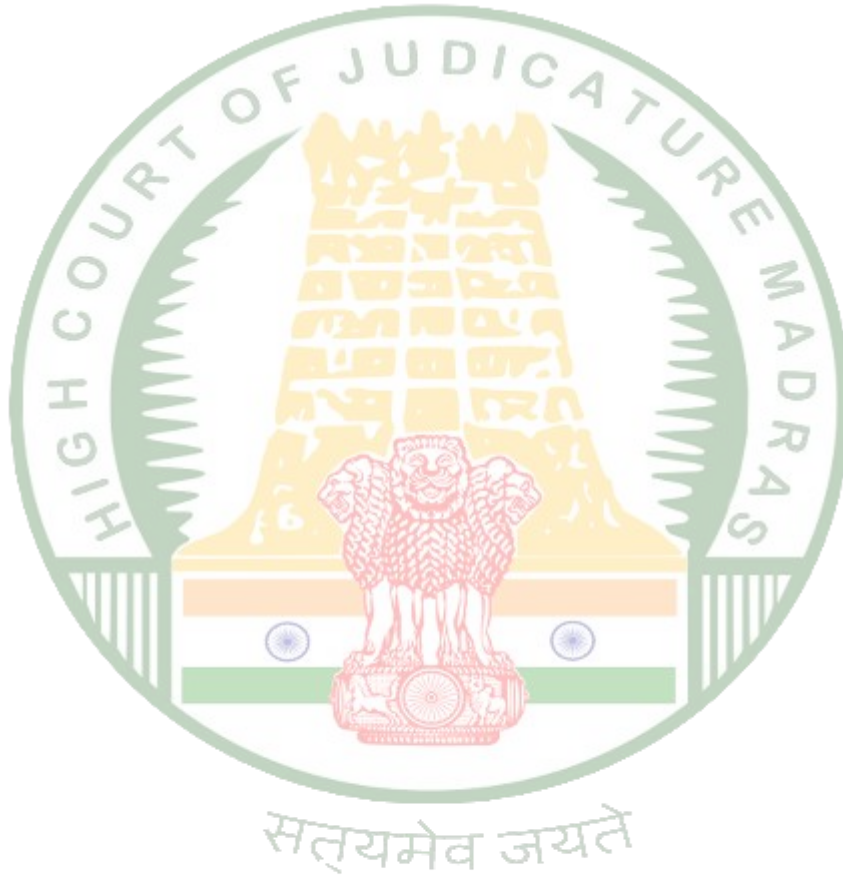
3. The Joint Secretary to Govt.
Public (Law and Order) Dept.
Fort St.George, Chennai 9.

4.The Superintendent of Central Prison, Salem.

5. The Public Prosecutor, High Court, Madras.

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