

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM

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

H.C.P.No.2296/2015

Selvam

.. Petitioner

Vs.

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

2.The District Magistrate
and District Collector,
Namakkal District.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus directing the respondents to produce the body of the petitioner's son namely Dharma @ Dharmaraj, S/o.Selvam, who is detained in Central Prison, Salem, before this Court and set him at liberty forthwith by calling for the records pursuant to the detention order made in C.M.P. No.44/Goonda/2015/M1 dated 31.07.2015 under Act 14/1982 on the file of the second respondent and quash the same.

For Petitioner : Mr.R.Nalliyappan
For Respondents : 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.44/Goonda/2015/M1 dated 31.07.2015, whereby son of the petitioner/detenu, by name, Dharma @ Dharmaraj, S/o.Selvam, 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, 2080 (Tamil Nadu Act 14 of 2080) branding him as a "GOONDA".

2. Though many grounds have been raised in the petition, Mr.R.Nalliyappan, 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.466/2015 under Sections 392 r/w.506(ii) IPC registered by Namakkal Police Station and the detenu has not moved any bail application in the ground case as on the date of the passing of the detention order. He would also contend that the detaining authority has placed reliance on the statement of the sponsoring authority to the effect that the wife of the detenu is taking steps to take him out on bail by filing bail application in the said case. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail application in the ground case and he is in remand in the said case. 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 ground case and there is no 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 ground 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 [Cr1.] 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] ; [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] and [d] 2008 [3] MLJ (Cr1.) 144 [S.ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER].

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 evidenced from paragraph 4 of the grounds in the order of detention, the detenu is in remand in the ground case [Cr.No.466/2015] and he has not filed any bail application in the said ground case as on the date of passing of the detention order. Merely stating that steps have been taken on behalf of the detenu by the wife of the detenu to file bail application in the ground case is not sufficient to pass an order of detention. Excepting recording a statement that the wife of the detenu is taking steps to file bail application, no other materials are shown as to the steps taken to file bail application in the said case. 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 a real possibility of his coming out on bail in the ground 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, 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 [Cr1.] 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 2080. 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."

[d]In 2008 [3] MLJ (Cr1.) 144 [S.ANDAL VS. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, MADURAI DISTRICT, MADURAI AND ANOTHER], it has been held as follows:

"Where a bail application filed by the detenu was pending before the Court and the Detaining Authority coming to the conclusion that there was a real possibility of the detenu coming out on bail, even prior to the passing of an order on bail application, held the detention order was passed without proper application of mind, rendering it vitiated."

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(CS VI)

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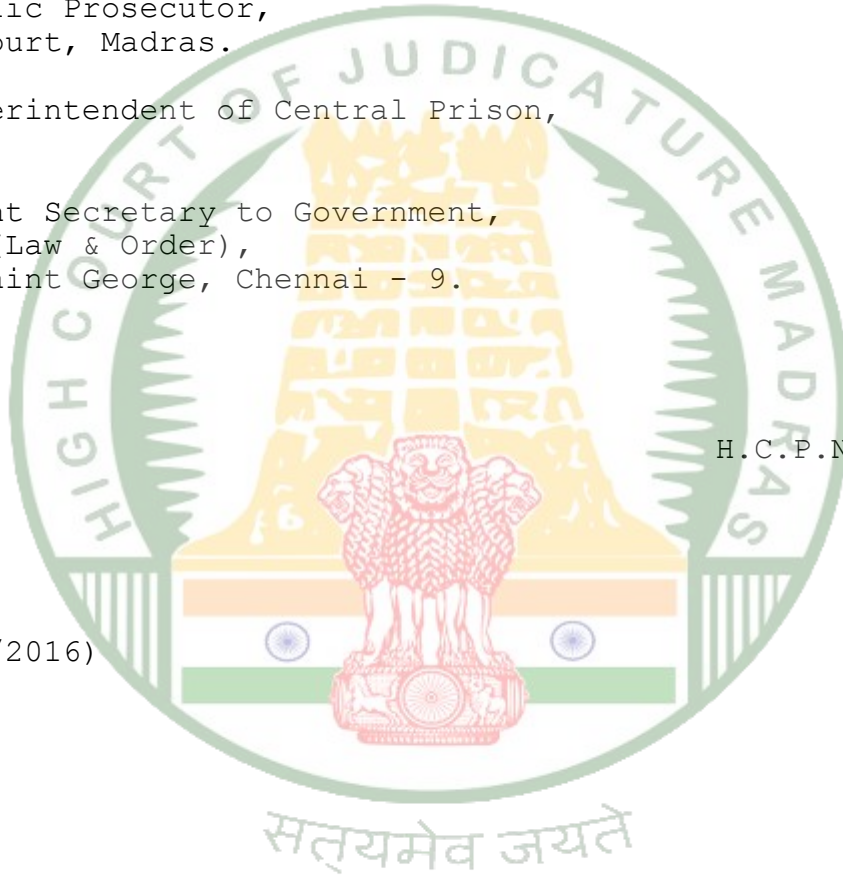
Sub Assistant Registrar

To

- 1.The State of Tamil Nadu,
rep. by its Secretary to Government (Home),
Prohibition & Excise Department,
Secretariat, Chennai 600 009.
- 2.The District Magistrate
and District Collector,
Namakkal District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent of Central Prison,
- 5.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
Salem.

H.C.P.No.2296/2015

svi (CO)
srg (17/02/2016)



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