

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.04.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

H.C.P. NO. 2451 OF 2015

K.Sathiyaraj

.. Petitioner

- Vs -

1. State

rep. by its Secretary to Govt.
Home, Prohibition and Excise Department
Fort St. George
Chennai 600 009.

2. The District Collector and
District Magistrate
Kancheepuram District

.. Respondents

Petition preferred under Article 226 of The Constitution of India praying this Court to issue a Writ of Habeas Corpus to call for the records pertaining to the detention order passed by the 2nd respondent in BCDFGISSSV No.73/2015 dated 9.9.2015 and quash the same and direct the respondents to produce the detenu, Manikandan @ Murali @ Bablu, S/o Kumar, aged 20 years before this Court and set him at liberty.

For Petitioner : Mr. S.Swamidoss Manokaran

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

ORDER

(DELIVERED BY R.SUDHAKAR, J.)

The petitioner is the brother of the detenu Manikandan @ Murali @ Bablu, S/o Kumar, and challenge is made to the order of detention dated 9.9.2015 passed by the 2nd respondent by which the detenu has been branded as a 'Goonda' and detained under Tamil Nadu Act 14 of 1982.

2. In para-3 of the grounds of detention, it is stated among other things that the detenu is involved in the commission

of the offence, which took place on 30th July, 2015, which led to the registration of a case by the Chengalpattu Taluk Police Station in Crime No.508/2015 u/s 120 (b) and 302 IPC. It is further stated that the detenu was arrested on 2nd Aug., 2015 and was produced before the Court of Judicial Magistrate No.II, Chengalpattu, on 3.8.2015 and remanded to judicial custody till 17.8.2015. The detaining authority, on being satisfied with the materials placed before him that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention.

3. Learned counsel appearing for the petitioner/detenu submits that in para-5 of the grounds of detention it is stated that similar accused in Crime No.604/2014 was released on bail by the District & Sessions Court - II, Kancheepuram in C.M.P. No.1327/2014 on 10.09.2014. The detaining authority to arrive at the subjective satisfaction as to the real and imminent possibility of the detenu coming out on bail and indulging in activities prejudicial to the maintenance of public order, has placed reliance upon the order granting bail in similar case in crime No.1327/2014. However, it is submitted by the learned counsel for the petitioner that the said order, available at page-293 of the booklet, in para-5, it is seen that the bail in respect of the said petitioner was dismissed. The detaining authority has not applied his mind to the materials available on record and on the basis of an incorrect fact has detained the detenu. There has been total non-application of mind on the part of the detaining authority in detaining the detenu, which has prevented the detenu from making an effective representation for revoking the order of detention and, hence, learned counsel prays for quashment of the impugned order.

4. Heard the learned counsel appearing for the petitioner and the learned Addl. Public Prosecutor appearing for the respondents and perused the materials available in the typed set of documents.

5. As rightly contended by the learned counsel for the petitioner, a perusal of the bail order relating to CMP No.1327/2014 on which reliance has been placed by the detaining authority, the same shows that the accused therein, whose case has been relied upon to reject the representation of the detenu, has not been granted bail. However, the detaining authority, without applying his mind, has mechanically stated that bail has been granted to the said accused. The said incorrect fact in the order of detention, in the considered opinion of this Court, has definitely caused prejudice to the detenu and prevented him from making an effective representation for revoking the order of detention, and, therefore, the impugned order is liable to be quashed.

6. Accordingly, this habeas corpus petition is allowed and the order of detention made in BCDFGISSSV No.73/2015 dated 09.09.2015 is quashed and the detenu, namely, Manikandan @ Murali @ Bablu, S/o Kumar, who is now detained in District Jail & Borstal School, Pudukottai, is directed to be released forthwith unless his detention/custody is required in connection with any other case/proceeding.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

GLN

To

1. The Secretary to Govt.
Government of Tamil Nadu
Prohibition and Excise Department
Fort St. George, Chennai 600 009.
2. The District Collector and
District Magistrate
Kancheepuram District.
3. The Public Prosecutor
High Court, Madras.
4. The Superintendent of Police
District Jail & Borstal School
Pudukottai.
5. The Joint Secretary to Governemnt
Public Law and Order Department Secretariat,
Chennai-9

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H.C.P. NO.2451 OF 2015

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