

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-03-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

HABEAS CORPUS PETITION No.2503 of 2015

Vijaya

.. Petitioner

vs.

1.The State of Tamilnadu
Represented by Secretary to Government
Prohibition and Excise Department
Fort St. George
Chennai-600 009.

2.The Commissioner of Police
Chennai Police
Office of the commissioner of police
(Goondas Section)
Vepery, Egmore
Chennai-600 008.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, to call for the entire records relating to the Detention Order passed by the second respondent in BCFGISSV No.624/2015, dated 28.07.2015, quash the same and consequently, to direct the respondents to produce the petitioner's son viz., Ayyappan, S/o.Chinnathambi, aged 25 years, now confined at Central Prison, Puzhal, Chennai, before this Court and to set him at liberty.

For Petitioner : Mr.D.Yesudhas

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

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

Petitioner is the mother of the detenu, namely, Ayyappan, and challenge is made to the order of detention, dated 28.07.2015, passed by the second respondent, under which the detenu has been branded as a "Goonda" and detained under the Tamil Nadu Act 14 of 1982.

1. J-3 Guindy Police Station Cr.No.2275/2015 for the alleged commission of the offences u/s. 341, 384 and 506 (ii) IPC and the offence said to have taken place at 17.30 hours on 21.06.2015.

2. J-3 Guindy Police Station Cr.No.2309/2015 for the alleged commission of the offences u/s. 294 (b), 302 and 506(ii) IPC and the offence said to have taken place at 05.30 hours on 24.06.2015.

3. In the grounds of detention, it is stated among other things, that on 24.06.2015, at about 11.00 hours, the detenu wrongfully restrained the complainant and threatened him to give money. When the complainant replied that he had no money with him, the detenu brandished a knife and snatched away a sum of Rs.700/- from the complainant. When the complainant raised hue and cry, the detenu pelted stones on him and in view of the same, the traffic came to a standstill. Later on, the detenu was apprehended and in this regard, the Sub-Inspector of Police has registered a case in J-3 Guindy Police Station Crime No.2314 of 2015 for the commission of the offences under Sections 341, 392, 336 and 506 (ii) IPC (which is the ground case). The detenu was arrested on 24.06.2015, at about 14.00 hours. On such arrest, the detenu voluntarily came forward to give a confession statement, which was recorded in the presence of witnesses, wherein, he has admitted his involvement in the 1st and 2nd adverse cases and the ground case. Thereafter, the detenu was produced before the jurisdictional Magistrate, who remanded him to judicial custody till 08.07.2015 and subsequently, his remand period was extended till 05.08.2015. The detaining authority on being satisfied with the materials placed before him by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, has clamped the order of detention.

4. Mr.D.Yesudhas, learned counsel appearing for the petitioner, would submit that the detenu is in custody in connection with the two adverse cases and ground case and he filed an application for bail in respect of the 2nd adverse case in Crl.M.P.No.10437 of 2015 and the same was dismissed on 14.07.2015. Once again, he filed an application for bail in respect of the 2nd adverse case in Crl.O.P.No.18153 of 2015 and the same is pending. He has also filed applications for bail in respect of the 1st adverse case as well as the ground case in Crl.M.P.Nos.1810 and 1811 of 2015 respectively and both are pending. It is the submission of the learned counsel for the petitioner that the detaining authority has arrived at the subjective satisfaction that the detenu is likely to come out on bail in both the adverse cases as well as the ground case by placing reliance on a similar case registered at K-3 Aminjikarai Police Station Crime No.164 of 2013, wherein, bail was granted by the V Metropolitan Magistrate Court, Egmore, Chennai, in Crl.M.P.No.460 of 2013. But, a copy of the similar case particulars have not been furnished to the detenu, and thereby, the detenu was prevented from making effective representation and thus, the subjective satisfaction arrived at

by the detaining authority is vitiated and hence, prays for the quashment of the said order.

5. Per contra, Mr.A.N.Thambidurai, the learned Additional Public Prosecutor would contend that on due and proper application of mind, the detaining authority has rightly arrived at the subjective satisfaction and hence, prays for the dismissal of the petition.

6. We have considered the rival contentions of the learned counsel on either side and we have also perused the materials available on record.

7. As rightly pointed out by the learned counsel appearing for the petitioner, the detaining authority in order to arrive at the subjective satisfaction that the detenu is likely to come out on bail in both the adverse cases as well as the ground case by placing reliance on a similar case particulars registered at K-3 Aminjikarai Police Station Crime No.164 of 2013, wherein, bail was granted by the V Metropolitan Magistrate Court, Egmore, Chennai, in Crl.M.P.No.460 of 2013. But, admittedly, the copy of the similar case particulars have not been furnished to the detenu and thereby, the detenu was deprived from making effective representation to the authorities against the order of detention. Therefore, the subjective satisfaction arrived at by the detaining authority is vitiated. Hence on this sole ground, the order of detention is liable to be quashed.

8. In the result, this Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in Memo No.624/BCDFGISSSV/2015, dated 28.07.2015, is quashed. The detenu is ordered to be set at liberty forthwith unless his custody is required in connection with any other case.

Sd/-

Asst.Registrar (AS)

/true copy/

Sub Asst. Registrar

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To:

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

2.The Commissioner of Police
Chennai Police
Office of the commissioner of police
(Goondas Section)
Vepery, Egmore
Chennai-600 008.

3.The Superintendent of Prisons
Central Prison, Puzhal, Chennai.

4. The Joint Secretary to Government
Public (Law and order) Department
Fort St George, Chennai-9

5. The District Collector
Chennai

6.The Additional Public Prosecutor
High Court, Madras.

HCP No.2503 of 2015

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