

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.2578 of 2015

E.Rajeswari

.. Petitioner

vs

1.The Government of Tamil Nadu
Represented by its Secretary
Home, Prohibition and Excise (XVI) Department
Fort St. George
Chennai-600 009.

2.The Commissioner of Police
Office of the Commissioner of Police
Chennai.

... 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 BCDFGISSSV No.983/2015, dated 19.09.2015, quash the same and consequently, to direct the respondents to produce the petitioner's son viz., Appa @ Jayapriyan, aged about 28 years, now confined at Central Prison, Puzhal, Chennai, before this Court and to set him at liberty.

For Petitioner : Mr.R.Vijayakumar

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, Appu @ Jayapriyan, and challenge is made to the order of detention, dated 19.09.2015, 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.

2. As per the grounds of detention dated 19.09.2015, the detenu came to the adverse notice in the following four cases:-

1. D2 Chengalpattu Taluk Police Station Cr.No.1320 of 2012 for the alleged commission of the offences u/s. 147, 148 and 302 IPC and the offence said to have taken place at 17.30 hours on 20.11.2012.

2. S1 St.Thomas Mount Police Station Cr.No.1295 of 2015 for the alleged commission of the offence u/s. 394 IPC and the offence said to have taken place at 01.30 hours on 04.07.2015.

3. S9 Palavanthangal Police Station Cr.No.1617 of 2015 for the alleged commission of the offences u/s. 341, 294(b), 392 and 506 (ii) IPC and the offence said to have taken place at 18.30 hours on 27.08.2015.

4. S1 St.Thomas Mount Police Station Cr.No.1787 of 2015 for the alleged commission of the offence u/s.392 IPC and the offence said to have taken place at 20.00 hours on 27.08.2015.

3. In the grounds of detention, it is stated among other things, that on 28.08.2015, at about 08.00 hours, when the complainant Balamurugan was proceeding to attend his work, at that time, two persons had wrongfully restrained him and caught hold of him and abused him with obscene words and one of them tried to take away the money from his shirt pocket and therefore, the complainant raised alarm and tried to apprehend him. The detenu threatened the complainant and public with dire consequences and escaped from the spot. The complainant proceeded to S4 Nandambakkam Police Station and lodged a complaint, based on which, a case was registered in Crime No.1669 of 2015 for the commission of the offences under Sections 341, 323, 294(b), 336, 392, 397, 506 (ii) and 307 IPC (which is the ground case). The detenu was arrested on 28.08.2015, at about 09.15 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 guilt that he has involved in the 3rd and 4th adverse cases and the ground case. Thereafter, the detenu was produced before the Judicial Magistrate, Alandur, who remanded him to judicial custody till 11.09.2015 and subsequently, his remand period was extended till 25.09.2015. 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.R.Vijayakumar, learned counsel appearing for the petitioner, has drawn the attention of this Court to paragraph No.4 of the grounds of detention and would submit that the detenu is in custody in connection with the 3rd adverse case and ground case and he has not been remanded in connection with the 1st and 4th adverse cases and the said fact has not been taken note of by the detaining authority and he has arrived at the subjective satisfaction that there is very likelihood of the detenu coming out on bail in the ground case and 3rd adverse case by placing reliance on a similar case registered at R-4 Soundarpandiyanar Angadi Police Station Cr.No.384 of 2015 for the offences under Sections 341, 392, 397, 294(b), 336, 427 and 506 (ii) IPC, wherein, bail was granted by the Principal Sessions Court, Chennai, in Crl.M.P.No.2805 of 2015. It is the further submission of the learned counsel for the petitioner that the offences in respect of similar case are not similar as that of the ground case 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. This Court after considering the rival contentions of the learned counsel on either side is of the view that the detention order is liable to be quashed for the following reasons.

7. Admittedly, the detenu has not been arrested in connection with the 1st and 4th adverse case. The said fact has not been taken note of by the detaining authority and he has arrived at the subjective satisfaction that there is very likelihood of the detenu coming out on bail in the ground case and 3rd adverse case by placing reliance on a similar case registered at R-4 Soundarpandiyanar Angadi Police Station Cr.No.384 of 2015 for the offences under Sections 341, 392, 397, 294(b), 336, 427 and 506 (ii) IPC, wherein, bail was granted by the Principal Sessions Court, Chennai, in Crl.M.P.No.2805 of 2015. It is further seen that the offences in respect of similar case are not similar as that of the ground case. Therefore, the subjective satisfaction arrived at by the detaining authority that there is very likelihood of the detenu coming out on bail and if he comes out on bail, he will indulge in further activities, which will be prejudicial to the

maintenance of public order, 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.983/BCDFGISSSV/2015, dated 19.09.2015, is quashed. The detenu is ordered to be set at liberty forthwith unless his custody is required in connection with any other case.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

paa

To:

- 1.The Secretary
The Government of Tamil Nadu
Home, Prohibition and Excise (XVI) Department
Fort St. George
Chennai-600 009.
- 2.The Commissioner of Police
Office of the Commissioner of Police
Chennai.
- 3.The Superintendent of Prisons
Central Prison, Puzhal, Chennai.
- 4.The Additional Public Prosecutor
High Court, Madras.

सत्यमेव जयते

H.C.P. No.2578 of 2015

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