

IN THE HIGH COURT OF JUDICATURE AT MADRAS

03.02.2016

CORAM

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

H.C.P.No.2602/2015

M.Nisha

.. Petitioner

Vs.

- 1.The Principal Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Magistrate and District Collector,
Namakkal District.
- 3.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
- 4.The Superintendent of Police,
Salem Central Prison,
Salem District.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus to call for the entire records connected with the detention order in C.M.P.No.41/Goonda/2015/M1 dated 04.07.2015 on the file of the second respondent and quash the same as illegal and direct the respondents to produce the body and person of the petitioner's husband namely, Mohamed Imthiyas, Son of Abdul Razeed, aged about 28 years now confined at Central Prison, Salem, before this Court and set him at liberty forthwith.

For Petitioner : Mr.A.Raja Mohamed

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.41/Goonda/2015/M1 dated 04.07.2015, whereby the husband of the petitioner/detenu, Mohamed Imthiyas, Son of Abdhul Razeed aged about 28 years, was ordered to be detained under the provisions of 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 "GOONDA".

2.Though many grounds have been raised in the petition, Mr.A.Raja Mohamed, 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.208/2015 registered by Pallipalayam Police Station as well as in 1st adverse case in Cr.No.68/2015 registered by Tiruchengode Rural Police Station, 2nd and 3rd adverse cases in Cr.Nos.116 and 147/2015 registered by Komarapalayam Police Station and 4th adverse case registered by Molasi Police Station in Cr.No.37/2015 respectively and he has not filed any bail applications in the said cases as on the date of 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 applications in the said cases. Further, the Detaining Authority has arrived at the subjective satisfaction that there is very likelihood of the detenu coming out on bail in the said cases and that there is a real possibility of his coming out on bail in the said cases, by relying upon certain similar cases. The learned counsel would add that admittedly, in this case, no bail applications have been filed by him in the said cases and he is in remand in the said cases. When no bail applications are filed, there is no real possibility of the detenu coming out on bail. No cogent material is available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the said cases and there is imminent possibility of the detenu coming out on bail in the said cases. 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 said cases,

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] 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 the order of detention, the detenu is in remand in the ground case [Cr.No.208/2015] and in 1st, 2nd, 3rd and 4th adverse cases [Cr.Nos.68,116, 147 and 37/2015] and he has not filed any bail applications in the said adverse cases as well as in the 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 petitioner/wife of the detenu to file bail applications in the said cases 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 applications, no other materials are shown as to the steps taken to file bail applications in the said cases. When no bail applications are 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 as well as in adverse cases 1 to 4 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 [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 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."
(emphasis supplied)

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(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Chennai-600 009.
- 2.The District Collector and District Magistrate,
Office of the District Magistrate and District Collector,
Namakkal District.
- 3.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
- 4.The Superintendent of Police,
Salem Central Prison,
Salem District.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
- 6.The Public Prosecutor, High Court of Madras,
Chennai.

+1cc to Mr.A.Raja Mohamed, Advocate SR.6967

H.C.P.No.2602/2015

kji[col]
srg 09/03/2016