

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.2751/2015

Pownammal

.. Petitioner

Vs

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

2.The Commissioner of Police,
Chennai City Police,
Commissioner Office, Vepery
Chennai-8.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS calling upon the production of records relating to the impugned detention order dated 18.09.2015 made in BDFGISSSV No.951/2015 passed by the 2nd respondent herein, set aside the same as illegal and direct the respondents to produce the detenu Appu @ Venkatesan, son of Baskar, aged about 24 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.Ilayaraja Kandasamy

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

ORDER

[Order of the Court was made by M.JAICHANDREN,J]

This Habeas Corpus Petition is filed, by the mother of the detenu, namely, Appu @ Venkatesan, son of Baskar, aged 24 years,

to issue a Writ of Habeas Corpus, to call for the records, in BDFGISSSV No.951/2015 dated 18.09.2015, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) 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, 1982 (Tamil Nadu Act 14/1982) the Tamil Nadu Act 14 of 1982, branding him as a "Goonda", in the Central Prison, Puzhal, Chennai and to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. Though several grounds have been raised in this Habeas Corpus Petition, Mr.Ilayaraja Kandasamy, the learned counsel for the petitioner has assailed the impugned detention order, only on the ground of non-supply of copy of the bail order passed in similar case, referred to in the grounds of detention, for arriving at the subjective satisfaction that there is likelihood of the detenu coming out on bail, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention.

3. Per contra, Mr.A.N.Thambi Durai, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. However, he submitted that the copy of the bail order was not supplied to the detenu.

4. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

5. It is seen from paragraph 4 of the Grounds of Detention that in similar case, the accused was released on bail in CrI.MP.No.2805 of 2015 on the file of the learned Principal District and Sessions Judge, Chennai in R.4 Soundarpandiyana Angadi Police Station Cr.No.384/2015 under Sections 341, 392, 397, 294-b, 336, 427 and 506(ii) of IPC. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain the copy of the said bail order. The said bail order was a document relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such a document has not been supplied to the detenu, as it did not form part of the Paper Book furnished by the Prosecution. Therefore, non supply of the

copy of the bail order in similar case to the detenu would vitiate the impugned detention order.

6. The Honourable Supreme Court in M.Ahamed Kutty Vs. Union of India and another (1990-2-SCC-1) has observed thus:-

"7. Considering the facts in the instant case, the bail application and the bail order were vital materials for consideration. If those were not considered the satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have formed part of the documents supplied to the detenu with the grounds of detention and without them the grounds themselves could not be said to have been complete. We have, therefore, no alternative but to hold that it amounted to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty in this case." (Emphasis added)."

7. This court in Jarinabegam Vs. State of Tamil Nadu by Secretary to Government, Prohibition and Exercise Department, Chennai and another (2007-1-MLJ-Crl-18) relying upon the decision of the Honourable Supreme Court cited supra has held that non supply of a copy of the bail application or bail order to the detenu has the effect of vitiating the order or detention.

8. As already analysed by us, in the facts and circumstances of the present case, non-supply of the copy of the bail order passed in similar case to the detenu has the effect of vitiating the impugned detention order. Further, due to non supply of such a vital document, the detenu has lost valuable right to make an effective representation to the authorities concerned.

9. In the light of the above said principles laid down by the Honourable Supreme Court and for the reasons stated above, the impugned order of detention is vitiated and the same is liable to be quashed.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order, dated 18.09.2015, 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-III)

//True Copy//

Sub Assistant Registrar

tsi

To

- 1.The Secretary to Government ,
The State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George Chennai 600 009.
- 2.The Commissioner of Police,
Chennai City Police,
Commissioner Office, Vepery,
Chennai-8.
- 3.The Superintendent of Police,
Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Joint Secretary to Government
Public (Law & Order) Department,
Secretariat, Chennai 9.

H.C.P.No.2751/2015

lrs co
kra 29.04.2016

सत्यमेव जयते

WEB COPY