

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2016

CORAM

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

H.C.P.No.2789 of 2015

Balaji

... Petitioner

Vs.

1. State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.

2. The District Magistrate and
District Collector,
Tiruvallur District, Tiruvallur.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records relating to the order of detention passed by the second respondent dated 28.09.2015 in BCDFGISSSV No.38/2015, quash the same and direct the respondents to produce the body of the detenu Rajesh Kumar (Male/aged 32), son of Balaji (now detained at Central Prison-II, Puzhal, Chennai-66) before this Court and set him at liberty.

For Petitioner : Mr.V.Elangovan

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

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 BCDFGISSSV No.38/2015 dated 28.09.2015, whereby the detenu/petitioner's son Rajesh Kumar, Male, aged 32 years, son of Balaji, 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 "Bootlegger".

2. Though many grounds have been raised in the petition, Mr.V.Elangovan, 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.571/2015 registered by PEW R.K.Pet Unit and the bail application filed by the detenu in the said ground case before the Principal District and Sessions Judge, Tiruvallur in CrI.MP. No.2753/2015 is pending as on the date of the passing of the detention order. Further, the Detaining Authority has arrived at the subjective satisfaction that there is very likely of the detenu coming out on bail in the ground case by relying upon a similar case registered by R.K.Pet PEW Unit Crime No.140/2014 u/s.4(1)(aaa) r/w.4(1-A) Tamil Nadu Prohibition Act 1937 wherein bail was granted to the accused Durai by the Principal Sessions Judge, Tiruvallur in CrI.M.P.No.877/2014 dated 25.02.2014. The learned counsel would add that admittedly, in this case, the bail application filed by the detenu in the ground case is pending and he is in remand in the said case. When a bail application is pending, there is no presumption that the detenu would be granted bail. No cogent materials are available before the Detaining Authority to conclude/to apprehend that the detenu is likely to get bail in the ground case. The apprehension entertained in the mind of the detaining authority that there is a real possibility of detenu coming out on bail as the bail application in the ground case is pending is not justifiable for the reason that he has pre-judged the matter. Concedingly he could not foresee the nature of the order that would be passed by the Court. By the reason of pendency of the application, one could not easily come to the conclusion that the Court would certainly grant bail to the accused. 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 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 [CrI.] 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 evidenced from paragraph 4 of the ground in the order of detention, the detenu is in remand in the ground case [Cr.No.571/2015] and the bail application moved by the detenu in the said ground case was pending as on the date of passing of the detention order. When a bail application is pending, there is no presumption that the detenu would come out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is every likelihood of his coming out on bail in the ground case 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. As rightly contended by the learned counsel appearing for the petitioner, the pendency of the bail application would not certainly enable the detaining authority to conclude that the Court would certainly grant bail to the accused. It is nothing but pre-judging the matter. Therefore, on this ground also 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 [Crl.] 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 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] 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 :

".....

In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail..... 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."

(emphasis supplied)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

14. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. 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."

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(AS)

//True Copy//

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To

Sub Assistant Registrar

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009.
2. The District Magistrate and
District Collector,
Tiruvallur District, Tiruvallur.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent of Central Prison-II,
Puzhal, Chennai.
5. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
6. The Commissioner of Police,
Tiruvallur District.

+1cc to Mr.S.Doraisamy, Advocate, S.r.No.7860

H.C.P.No.2789 of 2015

SVI (CO)
CA(27.02.2016)