

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.2906 of 2015

Kanchana

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government
Prohibition and Excise Department (Home)
Secretariat, Chennai 600 009.

2.The Commissioner of Police
Vepery, Chennai.

... 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 detenu's detention order passed by the 2nd respondent dated 27.09.2015 in No.1026/BDFGISSSV/2015 and set aside the same and produce the detenu Saravanan, male aged about 33, S/o Palani, now detained in Central Prison-II, Puzhal, Chennai.

For petitioner : Mr.Mohammed Aasif

For respondents : Mr.M.Maharaja,
Additional Public Prosecutor

O R D E R

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

Challenge is made to the order of detention passed by the second respondent vide Proceedings in No.1026/BDFGISSSV/2015 dated 27.09.2015, whereby the detenu herein, 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.Mohammed Aasif, the learned counsel appearing for the petitioner, confines his argument only in respect of the non-application of mind on the part of the detaining authority in passing the order of detention.

3. Learned counsel appearing for the petitioner had submitted that the detenu was arrested in the ground case in Cr.No.2091/2015 and in the fourth adverse case [Cr.No.1086/2015] by way of a formal arrest. It is his further submission that the bail applications filed in the ground case as well as in the fourth adverse case, were pending as on the date of passing of the detention order. However, the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the said ground case and in the fourth adverse case by relying upon the similar case, wherein, bail was granted by the learned Principal Sessions Judge, in CrI.MP.No.9921/2015. Learned counsel had further submitted that the offences committed by the accused in the fourth adverse case, are under sections 457 and 380 IPC. whereas the offences committed by the detenu in the similar case are under sections 341, 294(b), 397, 427 and 506(ii) I.P.C. and that this is indicative of the non-application of mind on the part of the Detaining Authority as the offences are not the same so as to arrive at the subjective satisfaction and in support of such contention, reliance was placed on the judgment of this Court, in Rekha Vs. State of Tamil Nadu through Secretary to Govt. & Anr., reported in (2011) 5 SCC 244 and the judgment reported in 2013 [1] LW (CrI.) 460 [LAKSHMI BAI NAT VS. THE SECRETARY TO THE GOVERNMENT, HOME, PROHIBITION AND EXCISE DEPT., FORT ST.GEORGE, CHENNAI-9 AND ANOTHER]. Hence, the learned counsel prays for quashing of the detention order.

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 the Grounds of Detention furnished before us, it is crystal clear that the Detaining Authority has arrived at the subjective satisfaction that the detenu would be granted bail in the ground case and in the fourth adverse case, [as the bail applications are pending before the Court

concerned], by placing reliance on the bail being granted in a similar case. In the case on hand, the offences committed by the detenu in the 4th adverse case are under sections 457 and 380 I.P.C. and that the Detaining Authority has not applied his mind in arriving at the subjective satisfaction. It is worth pointing out that whenever a similar case is referred to, to arrive at a subjective satisfaction, either the particulars of the similar case should be identical as that of the ground case or the adverse cases or the said similar case should be that of the co-accused of the detenu, which is not so in the case on hand. Further, unless, the similar cases referred to by the Detaining Authority, in the grounds of detention, are comparable with the cases relating to the detenu, in all aspects, it would not be open to the Detaining Authority to arrive at his conclusion that the detenu would be enlarged on bail.

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 *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."

[b] In the judgment reported in 2013 [1] LW (Cr1.) 460 [CITED SUPRA], the Division bench of this Court at Madurai has held as follows:-

4. In this regard, the learned counsel for the petitioner would rely on the Judgment of a Division Bench of this Court in Jother vs. The Secretary to Government, reported in 2012 (2) LW

(Cr1.) 527, wherein, in identical circumstances, in Paragraph No.17, the Division Bench has held as follows:

"17.Further, unless, the similar cases referred to by the Detaining Authority, in the grounds of detention, are comparable with the cases relating to the detenu, in all aspects, it would not be open to the Detaining Authority to arrive at his conclusion that the detenu would be enlarged on bail."

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 in nature. When ordinary law of the land is sufficient to deal with the situation, taking recourse to the preventive detention law is illegal.

9. In view of the above decisions rendered by the Division Bench of this Court, this Court is of the view that the detention order is vitiated on the above ground warranting interference.

10. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order 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

gms

To

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

2.The Commissioner of Police
Vepery, Chennai.

3.The Superintendent,
Central Prison II,
Puzhal, Chennai.

4.The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.

5.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2906 of 2015

SV(CO)
CA(27/05/2016)



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