

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2016

CORAM:

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

HCP.No.3188 of 2015

Padma

... Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai Police,
O/o.The Commissioner of Police,
Vepery,
Chennai-600 007

2. Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009

... Respondents

Prayer:- This Habeas Corpus Petition is filed, under Article 226 of the Constitution of India praying to issue a WRIT OF HABEAS CORPUS to call for the records of the detention made in B.D.F.G.I.S.S.V.No.1176/2015, dated 7.11.2015, passed by the first respondent, the Commissioner of Police, Chennai, to set aside the same and direct the respondent to produce the detenu before this Court and set the detenu Bala @ Balamurugan, male aged about 29 years, son of Palraj, at liberty, who is confined in Central Prison, at Puzhal.

For Petitioner : Mr.Dalit Tiger C.Ponnusamy

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, Bala @ Balamurugan, male aged 29 years, son of Palraj, to issue a Writ of Habeas Corpus, to call for the records, in No.1176/BCDFGISSSV/2015, dated 07.11.2015, passed by the 1st 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. Dalit Tiger C. Ponnusamy, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of documents in the similar cases, 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. Thambithurai, 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 materials relating to similar cases, referred to in the detention order, were 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 No. 4 of the Grounds of Detention that a general statement has been made to the effect that in similar cases bails are granted by the Courts, after a lapse of time, but there is no reference as to the cases in which bails are granted by the Courts. On a perusal of the Book-let furnished by the Prosecution, it is seen that it does not contain any such document, relating to those similar cases, in which bails were granted by the Courts. The said bail orders granted in similar cases were the documents relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was likely to be released on bail. Admittedly, such documents have 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 materials in similar cases 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 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 granted 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. In the result, this Habeas Corpus Petition is allowed. 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//

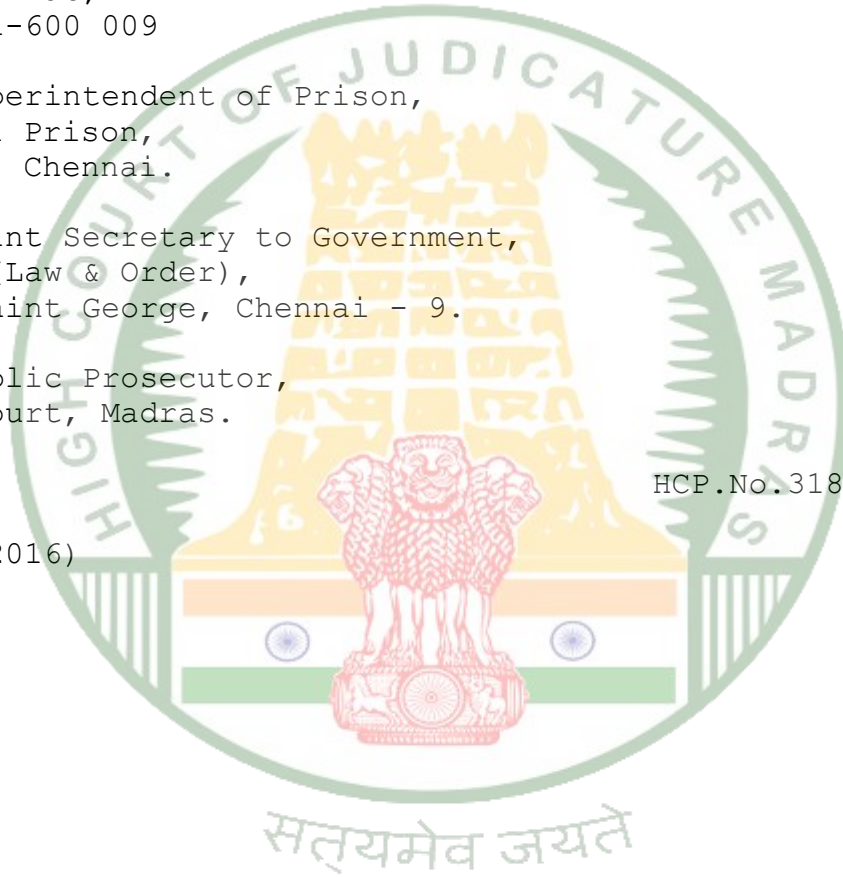
Sub Assistant Registrar

To:

1. The Commissioner of Police,
Greater Chennai Police,
O/o.The Commissioner of Police,
Vepery,
Chennai-600 007
2. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai-600 009
3. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
4. The Joint Secretary to Government,
Public(Law & Order),
Fort Saint George, Chennai - 9.
5. The Public Prosecutor,
High Court, Madras.

HCP.No.3188 of 2015

LRS (CO)
CA(30/05/2016)



WEB COPY