

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

THE HON'BLE MR. JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HON'BLE MR. JUSTICE S.M. SUBRAMANIAM

H.C.P. No.85 of 2017

Deepa

...Petitioner

vs.

- 1 The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009
- 2 The District Magistrate & District Collector
The Office of Collectorate, Salem - District
Salem ...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of habeas corpus to call for the records relating to the second respondent herein pertaining to the detention order made in C.M.P.No.51/B.L.A./C2/2016, dated 18.12.2016 passed by the second respondent and to quash the same and also to direct the detenu Thiru.Prabakaran, S/o.Selvam, who is presently detained in the Central Prison, Salem, to be produced before this Court and set at liberty.

For petitioner :Mr. D.Veerasekaran

For respondents:Mr. V.M.R.Rajentran
Additional Public Prosecutor

ORDER

This writ petition is directed against the preventive detention order passed by the District Magistrate and District Collector, Salem District, the second respondent herein, on 18.12.2016, detaining Thiru.Prabakaran, S/o.Selvam, 27 years, residing at East Kattukkottai, Mariviluthan Colony, Ramasesnapuram, Thalaivasal Police Station Limits, Attur Taluk, Salem District, as he satisfied the definition of the term "Bootlegger" found in Section 2(b) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Grabbers and Video

Pirates Act (Tamil Nadu Act XIV of 1982) and hence, the power available under Section 3, *ibid*, has been exercised. The grounds of detention were finalised on 18.12.2016 itself and were also served on the detenu.

2. From the grounds of detention, it appears that the detaining authority has been informed of four different crimes, which were registered against the detenu. The first is Crime No.157 of 2016 on the file of Thalaivasal Police Station in Salem District, which was registered pursuant to a raid undertaken by the Sub-Inspector of Police, Thalaivasal Police Station on 16.04.2016 at 12.00 hours. In this case, this Court has granted conditional bail vide order passed on 04.05.2016 in Crl.O.P.No.10437 of 2016. The second case relates to Crime No.339 of 2016 arising from and out of an incident that took place on 23.07.2016 at 02:30 p.m. In this case also, a conditional bail order was granted by this Court in Crl.O.P.No.26226 of 2016 vide order dated 08.12.2016. The third case relates to Crime No.359 of 2016, which pertains to an incident that took place on 12.10.2016. In this case, as on date of the preventive detention order being passed, Crl.O.P.No.26607 of 2016 was pending before this Court. The fourth case, viz., Crime No.465 of 2016 was registered pursuant to the incident that took place on 12.10.2016 at 16.00 hours. In this case, this Court has granted conditional bail in Crl.O.P.No.26227 of 2016 on 08.12.2016. Thus, the four criminal cases, which are pending against the detenu have all been noted by the detaining authority, including the facts relating to the grant of bail and the eventual release of the detenu, subject to the conditions imposed by this Court. However, in paragraph 4 of the grounds of detention, the following statement has been found:-

"4) I am also aware that Thiru.Prabakaran who is in remand in Attur P.E.W. Crime No.467/2016 for the offences under section 4 (1)(aaa), 4(1-A) Tamil Nadu Prohibition Act and he has filed a bail application before the District and Sessions Judge, Salem in C.M.P.No.3732/2016 for the above case is dismissed on 26.10.2016. Another bail petition filed for him before the Madras High Court in Crl.O.P.No.26235/2016 for the above case is dismissed on 08.12.2016. I am also aware that Thiru.Prabakaran has not produced the necessary sureties so far and not released on bail. If he produces the necessary sureties as per the Court order and is released on bail, he will indulge in such further activities, which will be prejudicial to the maintenance

of public order and public health. Further, recourse to the normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order and public health."

3. Thus, the detaining authority was of the opinion that the ordinary course of action to prosecute the detenu in accordance with law has not been producing the desired result of weaning him away from repeatedly indulging in similar activities, which are injurious to the public good and well being. In those given circumstances, the detention order came to be passed.

4. The learned counsel for the writ petitioner would urge before us that the statement made in paragraph no.4 of the detention order does contain certain gross errors and as a result, the application of mind by the detaining authority becomes clear not to have been so applied on proper lines. In support of this plea, the learned counsel has drawn our attention to the order passed by this Court in CrI.O.P. No.26235 of 2016 on 08.12.2016, a copy of which has been placed at page no.90 of the paper book, which has been served on the detenu.

5. Thus, there is no difficulty for us to get that the order passed by this Court in CrI.O.P. No.26235 of 2016 has been examined by the detaining authority and thereafter only, subjective satisfaction has been formed by him. However, paragraph nos.4 and 5 of the order dated 08.12.2016 passed by this Court in CrI.O.P. No.26235 of 2016 read as under:

"4. Considering the rival submissions made by both sides, it is seen that the petitioner was arrested on 12.10.2016. Further, the interrogation is over and the investigation is considerably over and there are eight previous cases pending as against the petitioner. Hence, I am inclined to grant bail to the petitioner with certain stringent conditions.

5. Accordingly, the petitioner is ordered to be released on bail, on his executing a bond for sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Attur, Salem District and on further condition that the petitioner shall stay at Madurai and report before the learned

Judicial Magistrate No.I, Madurai daily at 10.30 a.m. until further orders."

6. Far from dismissing the Criminal Original Petitions, as the detaining authority has observed in paragraph no.4 of the grounds of detention, this Court has granted bail, subject, of course, to certain stringent conditions imposed therein. The first condition is that the detenu was directed to execute a bond for a sum of Rs.10,000/- with two sureties each for a like sum to the satisfaction of the Judicial Magistrate No.II, Attur, Salem District in connection with Cr. No.467 of 2016 on the file of the Inspector of Police, P.E.W., Attur, Salem District and the second condition is that the detenu shall stay at Madurai to report before the Judicial Magistrate No.I, Madurai daily at 10.30 a.m. until further orders. We are also informed that the detenu has not moved any application seeking modification or cancellation of the conditions referred to supra in the order passed by this Court on 08.12.2016.

7. While we can understand that the detenu would somehow satisfy the condition no.1 imposed by this Court in the order dated 08.12.2016 easily by way of executing a bond for a sum of Rs.10,000/- with two sureties also drawn for the similar amounts, however, we are of the opinion that the second condition imposed by this Court is a very important one. This Court, obviously, noticing the frequency of involvement of the detenu in the same/similar crimes, realised that the detenu shall be removed from his known places of indulgence and he shall be confined at a far off place. That is the reason why instead of making the detenu appear before one Court or the other at Salem or any other Court in Salem District, this Court has chosen to make the detenu report everyday at 10.30 a.m. before the Judicial Magistrate No.I, Madurai. Madurai City is fairly too far away from Salem, the distance in between being more than 200 kms. Therefore, if a person has been released on bail and is ordered to be confined at a place which is nearly 200 kms. away from his normal habitation/residence at Salem or nearby, this Court expected that his further indulgence in similar crimes or same activities would get curtailed.

8. In the instant case, the detaining authority, unfortunately, misread the order passed by this Court on 08.12.2016 in CrI.O.P. No.26235 of 2016. If only the detaining authority had realised that the detenu is directed to be reporting to the Judicial Magistrate No.I, Madurai everyday at 10.30 a.m., the prospects of his getting involved in one crime or the other in and around Salem city and in proximately close locations thereof, taking advantage of his usual residence

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there and his connections there around, get completely ruled out, perhaps, he might have entertained a serious doubt as to whether the detenu is liable to be detained at all.

9. Recognising the significance of liberty as guaranteed by the Constitution of India, in particular, in Article 21, *ibid*, wherever there was improper application of mind to the relevant circumstances, we can only hold that further detention of the detenu pursuant to the order of detention becomes unsustainable. This is not a case where we can straightaway arrive at a conclusion that there was complete non application of mind on the part of the detaining authority. But, this is a case where a very vital parameter which would have significantly impacted the decision relating to preventive detention has been lost sight of and viewing from that angle, we have to recognise that the further detention becomes unsustainable.

10. For the aforestated reasons, we are of the opinion that the further detention of the detenu pursuant to the order passed by the detaining authority on 18.12.2016 becomes unsustainable and the same is accordingly quashed and the detenu shall be set at liberty forthwith.

Resultantly, this writ petition stands allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asi/cad

To

1 The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009

2 The District Magistrate & District Collector
The Office of the Collector
Salem District
Salem

3. The Superintendent of Central Prison,
Salem.
4. The Joint Secretary to Government
Public (Law & Order),
Fort St. George, Chennai-9.
5. The public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.43146

H.C.P. No.85 of 2017

RS (03/07/2017)



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