



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P(MD)No.338 of 2019

Saranya

...Petitioner

Vs.

1.The State of Tamil Nadu,
represented by the Secretary to Government,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.

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

3.The Superintendent,
Central Prison,
Madurai.

...Respondents

PRAYER: This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, calling for the records relating to the Detention Order passed by the second respondent in Detention Order No.18/2019, dated 1.4.2019 and to quash the same and direct the respondents to produce the body or person of the Detenu namely Atchimuthu @ Bala, son of Murugan, aged about 39 3, now detained at Central Prison, Madurai before this Court and set him at liberty.

For Petitioner

: Mr.C.Mayilvahana Rajendran

For Respondents

: Mr.K.Dinesh Babu

Addl. Public Prosecutor

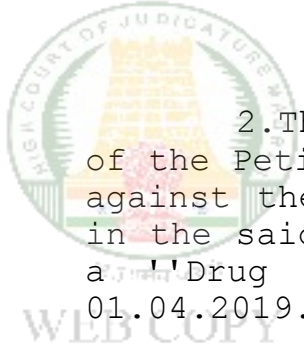
O R D E R

S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

The present Habeas Corpus Petition is directed against the Detention Order passed by second respondent in Detention Order No.18 of 2019, dated 1.4.2019.



2.The Sponsoring Authority had recommended for the detention of the Petitioner under Act 14 of 1982 on a solitary case registered against the Petitioner and the Petitioner was thereafter arrested in the said case. The Detaining Authority has branded the detenu as a ''Drug Offender'' and has passed the Detention order, dated 01.04.2019.

3.The learned counsel for the Petitioner submitted that the Detention Order was passed based on a solitary case that has been registered against the detenu in Crime No.49 of 2019, for the offence under Sections 8(c),20(b)(ii)(B) and 25 of NDPS Act. The learned counsel submitted that the Detaining Authority has taken into consideration the fact that the bail petition filed by the detenu is pending before the concerned Court. However, in order to arrive at the subjective satisfaction, the Detaining Authority has placed reliance upon the orders passed by the High Court for some other accused persons in the year 2015 and has stated that there is possibility of the detenu being coming out on bail. Admittedly, in this case, the bail petition is pending before the concerned court and therefore reference to an order passed by this Court in the year 2015 in a differently case and that too, taking into consideration the facts and circumstances of that particular case, completely reflects the non-application of mind and therefore, the Detention Order is vitiated.

4.The learned counsel for the Petitioner relied upon a judgement of this Court made in **H.C.P(MD)No.1391 of 2015, dated 16.12.2015 in Victoria .vs. The Secretary to Government, Home Prohibition and Excise Department, Secretariat, Chennai-600 009 and another** and the relevant portion is extracted hereunder:

''5.In paragraph 5 of the grounds of detention, the detaining authority observed as follows:

"I am aware that Thiru Easuraja, Male, Aged 34/2015, S/o.Chinnappan was produced before the learned Judicial Magistrate Court No.II, Mayiladuthurai on 04.09.2015 and remanded in Sub-Jail, Mayiladuthurai as a remand prisoner on the same day itself. His remand period expired on 18.09.2015 and further his remand period was extended upto 01.10.2015. I am aware that Thiru.Easuraja, Male, Aged 34/2015, S/o.Chinnappan is in remand in connection with the case in Sirkazhi Prohibition Enforcement Wing Cr.No.832 of 2015. I am aware that he had moved a bail petition before the learned Judicial Magistrate Court No.II, Mayiladuthurai in Cr.M.P.No.3567 of 2015 in connection with the above case and the same was dismissed by the learned Judicial Magistrate Court No.II, Mayiladuthurai on 07.09.2015. Further bail was pending in Cr.M.P.No.2391 of 2015, dated 14.09.2015.



Further in his own first adverse case in Poraiyar Police Station Crime No.29 of 2015 under Section 4(1)(aaa) TNP Act, 1937 Thiru.Easuraja, Male, Aged 34/2015, S/o.Chinnappan was arrested and remanded on 11.01.2015 and later released on bail by the Judicial Magistrate Court No.II, Mayiladuthurai in Cr.M.P.No.169 of 2015 on 20.01.2015. Hence, I am satisfied that there is a real and imminent possibility of (Thiru.Easuraja, Male, Aged 34/2015, S/o. Chinnappan) coming out on bail by filing a bail application for the above case before the Higher Court. If he comes out on bail, he will indulge in such further activities, which will be prejudicial to the maintenance of public order and public health."

A perusal of the same will show that the detaining authority referred to the pendency of the bail petition in Cr.M.P.No.2391 of 2015 before the Sessions Judge, Nagapattinam in respect of the ground case, viz. Crime No.832 of 2015 on the file of Sirkazhi Prohibition Enforcement Wing, but proceeded further observe that there was real possibility of the detenu coming out on bail in the said case by filing bail petition in the Higher Court as if no bail application was pending or that the bail petition would be dismissed by the Sessions Court. The same would show non-application of mind on the part of the Detaining Authority. On that ground, the Habeas Corpus Petition is bound to be allowed and the order of detention is liable to be interfered with and set aside.

5.In support of his contention, the learned counsel for the Petitioner also relied upon the case of **Rekha .vs. State of Tamil Nadu, through Secretary to Government and another reported in (2011) 5 SCC 244**, wherein, it has been held as follows:

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 :

"7.A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused.....

10.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.

27. 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 added)

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.

13. So far as the appellant's son is concerned, he had been arrested for the offence related to FIR No.53 (6) 2011 under Section 302 IPC read with Section 25(1-A) Arms Act dated 14.6.2011. The FIR had been lodged against unknown persons, however, appellant's son was arrested on 19.6.2011 in respect of the said offence. Subsequently, the detention order dated 30.6.2011 was passed by the District Magistrate under N.S. Act on various grounds, inter-alia, that the appellant's son was involved in extorting of money and giving shelter to underground members of unlawful association, namely, Kangleipak Communist Party vide notification published in the Gazette of India on



13.11.2009 as his activities were pre-judicial to the security of the State and maintenance of public order.

14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011 under Section 20 of the UA (P) Act and released orders in those cases dated 13.12.2010 and 1.6.2011 respectively had been passed.

15. 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.

6. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents.

7. We have carefully gone through the Detention Order. It is seen that the Detaining Authority has discussed about the case that has been registered against the detenu. The Detaining Authority has specifically stated that no bail petition has been filed by the detenu. However, he has arrived at the subjective satisfaction by relying upon the orders passed by the High Court for some other accused persons in the year 2015. Therefore, the subjective satisfaction arrived at by the Detaining Authority is not supported by any materials and it clearly reflects the non application of mind. Consequently, the Detention Order stands vitiated.

8. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention Order No.18 of 2019, dated 1.4.2019 passed by the second respondent is set aside. The detenu namely, Aachimuthu @ Bala, son of Murugan, aged about 33 years, is directed to be released forthwith unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (co)

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Dindigul District,
Dindigul.
- 3.The Superintendent,
Central Prison,
Madurai.
4. The Joint Secretary to Government,
Public (law & order)
Fort St.George,
Chennai-600 009.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
H.C.P(MD) No.338 of 2019
03.10.2019

vsn
VB(24.10.2019) 6P 6C