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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

H.C.P (MD)No.394 of 2019

Jeyakumar

...Petitioner

Vs.

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

2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai District.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

...Respondents

PRAYER: This Habeas Corpus Petition is filed under Article 226 of the Constitution of India, calling for the entire records connected with the detention order of the respondent No.2 in No.22/BCDFGISSSV/2018, dated 06.05.2019 and quash the same and direct the respondents to produce the body or person of the detainee by name Jeyakumar, son of Pandi, aged about 28 years, now detained at Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner

:Mr.R.Alagumani

For Respondents

: Mr.K.Dinesh Babu
Addl. Public Prosecutor

O R D E R

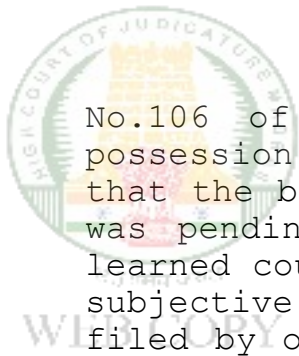
S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

The present Habeas Corpus Petition is directed against the Detention Order passed by the second respondent in Detention Order No.22/BCDFGISSSV/2019, dated 06.05.2019.

2. The learned counsel for the petitioner submitted that the detaining authority has only referred to a solitary case in Crime



No.106 of 2019, wherein, the detenu is said to have been in possession of 10.200 Kgs of Ganja. The learned counsel submitted that the bail petition filed by the detenu before the Special Court was pending on the date of passing of the detention order. The learned counsel submitted that the detaining authority has come to a subjective satisfaction based on the order passed in a bail petition filed by one Chinnaraj, wherein the Special Court had granted bail to the said Chinnaraj. The learned counsel submitted that the case that has been referred by the detaining authority pertaining to the said Chinnaraj was a case where he was in possession of 5 Kgs of Ganja and the Court had granted bail taking into consideration the fact of that case and this petition cannot be considered to be a similar case to that of the case on hand.

3. In order to substantiate his submission, the learned counsel relied upon the Judgment of this Court in ***Raj Vs. The Secretary to Government & Another*** reported in ***(2014 (2) LW (Cr1.) 305)***. The relevant portion in the Judgment is extracted hereunder:-

" 9. In this connection it is useful to refer the judgments relied on by the learned Counsel for the Petitioner:

(a) In T.V. Saravanan @ S.A.R. Prasanna Venkatachariar Chaturvedi v. State of Tamil Nadu through Secretary and another, 2006 (1) MLJ (Cr1.) 539 (cited supra), 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 Velmurugan @ Velu v. The Commissioner of Police, 2005 (1) CTC 577 (cited supra), 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 *Huidrom Konungjao Singh v. State of Manipur*, 2012 (7) SCC 181 (cited supra) which reads thus:

"12. In *Rekha v. State of Tamil Nadu through Secretary to Government and another*, 2011 (5) SCC 244, this Court while dealing with the issue held:

"...In our opinion, if details are given by the Respondents-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."



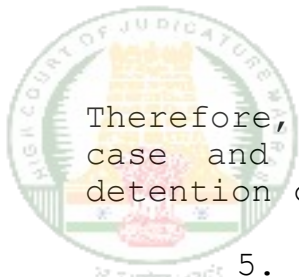
Thus, it is evident from the aforesaid Judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged in bail.

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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."

10. 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."

4. The learned Additional Public Prosecutor appearing on behalf of the respondents vehemently opposed the contentions raised by the learned counsel for the petitioner on the ground that insofar as the drug offender is concerned, the test of habituality will not apply and the same is clear from the definition of the drug offender, as provided under Section 2(e) 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 of 1982). The learned Additional Public Prosecutor further submitted that the bail petition filed by the petitioner was pending as on the date, when the detention order was passed and the detaining authority took into consideration the fact that in a similar case, bail has been granted by the Special Court to the concerned accused person. The learned Additional Public Prosecutor further submitted that both in the present case as well as in the similar case, the quantity involved is an inbetween quantity.



Therefore, the case under reference must be taken to be a similar case and there is absolutely no ground to interfere with the detention order.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. In the present case, the detention order itself proceeds on the footing that there is a solitary case against the detenu in Crime No.106 of 2019 and 10.200 Kgs of Ganja was recovered from the detenu. It is also clear from the detention order that the detaining authority was made aware of the fact that the bail application filed by the detenu was pending in CrI.M.P.No.886 of 2019. The detaining authority, in order to come to a subjective satisfaction, has relied upon another bail order that was passed in favour of one accused named Chinnaraj, who was involved in a similar offence where 5 Kgs of Ganja was seized from him

7. A reference to the order that was relied upon by the detaining authority shows that the Special Court has taken into consideration the peculiar facts of that case and also the length of detention and had passed the order. In the present case, the quantity is admittedly higher and the quantity in an NDPS case makes a big difference while considering the bail application. A higher quantity is normally put against the accused and the Courts are very strict in considering the bail application.

8. It will be relevant to take note of the Judgment cited by the learned counsel for the petitioner in this regard. It is clear from the above Judgment that normally the detaining authority has to take into account the similar offence insofar as the co-accused is concerned, who was earlier enlarged on bail. In this case, the order under reference is not that of the order passed with regard to a co-accused. The order pertains to some other accused person, who was involved in a different case. Therefore, it cannot be presumed that the same order will be passed in the case of detenu also. That apart, the so called similar case is not similar to the facts of the present case, since admittedly the quantity involved in this case is high.

9. In the considered view of this Court, the detaining authority has come to a subjective satisfaction without any supporting materials and by referring to a bail order involving a different accused person, who is not similarly placed to that of the detenu in the present case. Therefore, the detention order suffers from non-application of mind and the same is liable to be interfered by this Court.

10. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.22/BCDFGISSSV/2019, dated 06.05.2019, passed by the second respondent, is set aside. The detenu, namely, of Pandi, aged about 28 years, now detained at



Madurai Central Prison, is directed to be released forthwith, unless his detention is not required in connection with any other case.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary to Government
State of Tamil Nadu,
Home, Prohibition and Excise Department,
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- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City, Madurai District.
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ORDER MADE IN

H.C.P(MD)No.394 of 2019

05.11.2019

VB(04.12.2019) 6P 4C