
(2015) 03 MAD CK 0025
In the Madras High Court
Case No : H.C.P No 3003 of 2014

Pechiammal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Citation : (2015) 2 MadWNCri 226

Hon'ble Judges : M. Jaichandren and K.B.K. Vasuki, JJ.

Bench : Division Bench

Advocate : C.V. Kumar, Advocate, for the Petitioner; C. Emalias, Additional Public Prosecutor, for the Respondents

Final Decision : Dismissed

Judgement

M. Jaichandren and K.B.K. Vasuki, JJ.—This Habeas Corpus Petition is filed by the mother of the detenu, namely, Vidyadharan @ Karthik, aged 25 years, son of Dharmaraj to issue a Writ of Habeas Corpus to call for the records in Memo No. 1058/BDFGISSV/2014 dated 25.8.2014 passed by the Second 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 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 C.V. Kumar, the learned Counsel appearing for the Petitioner, confines his argument only in respect of non-application of mind on the part of the Detaining Authority in passing the Order of Detention.

3. According to the learned Counsel appearing for the Petitioner, in the Ground case in Anti Vice Squad, Chennai, in Crime No.83 of 2014, the detenu has moved a Bail Application in C.M.P. No.4813 of 2014, on the file of the 4th Metropolitan

Magistrate Court, Saidapet, Chennai, and the said Bail Application was dismissed. Another Bail Application filed in C.M.P. No 4897 of 2014 is still pending before the 4th Metropolitan Magistrate Court, Saidapet, Chennai. He would also submit that the Detaining Authority has referred the similar case in Anti Vice Squad, Chennai, in Crime No. 15 of 2014, wherein bail was granted by the 4th Metropolitan Magistrate Court, Saidapet, Chennai, in CrI.M.P. No. 49 of 2014. However, bail granted in the similar case in Crime No. 15 of 2014, was not based on merit but only on Medical ground. Therefore, no cogent materials are available before the Detaining Authority to apprehend that the detenu is likely coming out on bail in the said case. Hence, it is stated that the Detaining Authority has passed the impugned Detention Order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that it is very likely of the detenu coming out on bail is a mere ipse dixit without any cogent materials. In support of his contention, he relies on the Judgments of the Hon'ble Apex Court reported in (A) T.V. Saravanan @ S.A.R. Prasanna Venkatachariar Chaturvedi v. State of Tamil Nadu through Secretary and another, 2006 (1) MLJ (CrI.) 539, (B) Velmurugan @ Velu v. The Commissioner of Police, 2005 (1) CTC 577; (C) Huidrom Konungjao Singh v. State of Manipur, 2012(7) SCC 181, and (D) S. Andal v. District Magistrate and District Collector, Madurai District, Madurai and another, 2008 (3) MLJ (CrI.) 144.

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 given our careful and anxious consideration to the rival submissions put forward by the learned Counsel on either side and also perused the impugned Order of Detention and the materials placed on record.

6. As evidenced from Paragraph 4 of the grounds in the Order of Detention, the Ground case in Anti Vice Squad, Chennai, in Crime No.83 of 2014, the detenu has moved a Bail Application in C.M.P. No. 4813 of 2014, on the file of the 4th Metropolitan Magistrate Court, Saidapet, Chennai, and the said Bail Application was dismissed. Another Bail Application filed in C.M.P. No.4897 of 2014 is still pending before the 4th Metropolitan Magistrate Court, Saidapet Chennai. It is also to be noted that the Detaining Authority has referred the similar case in Anti Vice Squad, Chennai, in Crime No. 15 of 2014, wherein bail was granted by the 4th Metropolitan Magistrate Court, Saidapet Chennai in CrI.M.P. No.749 of 2014. However, it is brought to our notice by the learned Counsel appearing for the Petitioner that the bail granted in Crime No. 15 of 2014 was not based on merit but only on Medical ground. Therefore, the possibility of the detenu coming out on bail in his case, which is, according to the Detaining Authority, similar to that of the case, as referred to, does not arise herein. Therefore, the subjective satisfaction arrived at by the Detaining Authority that "it is very likely of his

coming out on bail" would be a mere ipse dixit and that would vitiate the Order of Detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Therefore on this ground, the impugned Order is liable to be set aside. Hence, the Order of Detention cannot be sustained in the eye of law and the same is liable to be set aside.

7. In this connection it is useful to refer the Judgment of the Hon"ble Apex Court relied on by tire 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 CrL 539, 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, 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 2080. 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 Older 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 Govt. and anr. 2011 (5) SCC 244. this Court while dealing with the issue held:

".....A mere ipse dixit statement in the grounds of detention cannot sustain the Detention Order and has to be ignored.....

In om opinion, there is a real possibility of release of a person on bail, ho 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."

14..... 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.

(d) In *S. Andal v. District Magistrate and District Collector, Madurai District, Madurai and another*, 2008 (3) MLJ (Crl) 144, it has been held as follows:

"Where a Bail Application filed by the detenu was pending before the Court and the Detaining Authority coming to the conclusion that there was a real possibility of the detenu coming out on bail, even prior to the passing of an Order on Bail Application, held the Detention Order was passed without proper Application of mind, rendering it vitiated."

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. When ordinary law of the land is sufficient to deal with, taking recourse to the Preventive Detention law is illegal.

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 lie 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.