

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN  
and  
THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.1461 of 2015

P.Iyyappan  
S/o.Palani

.. Petitioner

vs.

1.The District Collector cum District Magistrate,  
Cuddalore Taluk,  
Cuddalore District.

2.The Secretary to Government,  
Home, Prohibition & Excise Department,  
Secretariat,  
Fort St.George,  
Chennai - 600 009.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the records pertaining to the order of first respondent dated 27.05.2015 in C3/D.O/23/2015 detaining the detenu Saravanan S/o.Balu @ Balakrishnan, aged 42 years, as BOOTLEGGER under Tamil Nadu Act 14/1982 and set aside the same and direct the respondents to produce the said detenu now detained at Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.R.Srinivas

For respondents : Mr.M.Maharaja  
Additional Public Prosecutor

WEB COPY  
\*\*\*\*\*  
O R D E R

[Order of the Court was made by S.TAMILVANAN, J.]

Petitioner is the son-in-law of the detenu, who has been branded as a "Bootlegger" under the Tamil Nadu Act 14 of 1982 and detained under orders of first respondent passed in C3/D.O/23/2015 dated 27.05.2015.

2. As per the grounds of detention dated 27.05.2015, passed by first respondent, the detenu came to adverse notice in the following cases:

| Sl No. | Name of the Police station and Crime No. | Section of law             |
|--------|------------------------------------------|----------------------------|
| 1      | Cuddalore N.T. P.S. Crime No.76 of 2014  | 4(1)(aaa) & 4(1-A) TNP Act |
| 2      | Cuddalore N.T. P.S. Crime No.497 of 2014 | 4(1)(aaa) & 4(1-A) TNP Act |
| 3      | Cuddalore P.E.Wing Crime No.234 of 2015  | 4(1)(aaa) & 4(1-A) TNP Act |
| 4      | Cuddalore N.T. P.S. Crime No.178 of 2015 | 4(1)(aa) & 4(1-A) TNP Act  |

The alleged ground case has been registered against the detenu on 07.05.2015 by the Cuddalore N.T. Police Station, in Crime No.245 of 2015 for offences under Sections 4(1)(aaa) & 4(1-A) TNP Act (Transport). Aggrieved by the order of detention, the present writ petition has been filed.

3. Though many grounds have been raised in the petition, learned counsel for 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. Learned counsel for petitioner submitted that the detenu has been formally arrested in the adverse cases and though the said factum of the arrest of the detenu in the adverse cases has been mentioned in the grounds of detention, in paragraph No.6, the Detaining Authority has not stated whether any bail application has been moved by the detenu or whether the relatives of the detenu has taken any steps to move bail applications in respect of those cases as on the date of passing of the detention order. Further, though the bail application moved by the detenu in respect of the ground case before learned District Sessions Judge, (Vacation Court), Cuddalore, in CrI.M.P.No.2077 of 2015 was dismissed under orders dated 13.05.2015, the Detaining Authority has inferred that there is a real possibility of the detenu coming out on bail in the ground case since another bail application in CrI.M.P.No.2140 of 2015 moved by the detenu was pending as on the date of passing the detention order. This is indicative of the non-application of mind on the part of the Detaining Authority and hence, submitted that the detention order is vitiated and the same is liable to be quashed.

4. Per contra, 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 heard learned counsel on either side and perused the materials available on record.

6. As could be evidenced from the paragraph No.1 of the Grounds of Detention furnished before us, the detenu was formally arrested in the adverse cases. It is seen that in paragraph No.6 of the grounds of detention, the detaining authority has not taken into consideration whether any bail application has been filed by the detenu in respect of adverse cases. Further the detenu is in remand in the ground case [Cr.No.245/2014] and the bail application filed by the detenu in the ground case before learned District Sessions Judge, Cuddalore, in CrI.M.P.No.2140 of 2015, was pending as on the date of passing of the detention order. When a bail application is pending, then there is no presumption that the detenu would come out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is a likelihood of his coming out on bail in the ground case 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.

Accordingly, the impugned detention order passed by first respondent, detaining the detenu, namely, Saravanan S/o.Balu @ Balakrishnan, made in C3/D.O/23/2015 dated 27.05.2015, is quashed and the Habeas Corpus Petition is allowed. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

-s/d-

Assistant Registrar (CSIII)

True Copy

Sub-Assistant Registrar

gm

To

1.The District Collector cum District Magistrate,  
Cuddalore Taluk,  
Cuddalore District.

2.The Secretary to Government,  
Home, Prohibition & Excise Department,  
Secretariat,  
Fort St.George,  
Chennai - 600 009.

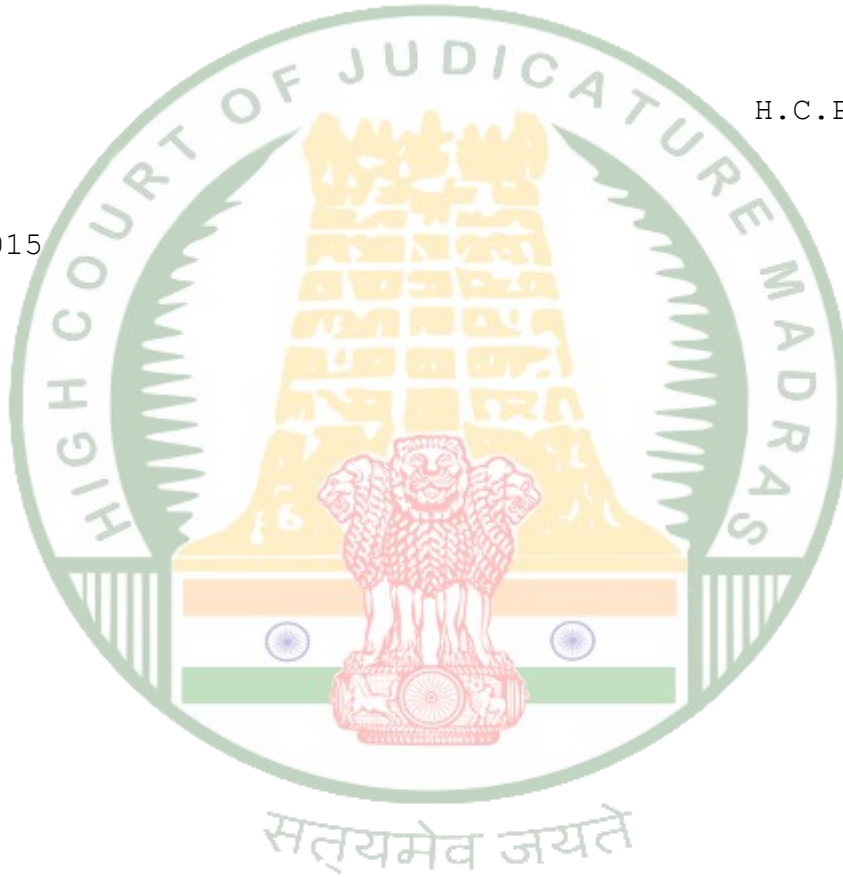
3.The Public Prosecutor,  
High Court, Madras.

4.The Superintendent of Central Prison,  
Cuddalore.

5.The Joint Secretary to Government  
Public Law and Order  
Fort St.George Chennai-9

H.C.P.No.1461 of 2015

aa28/09/2015



WEB COPY