

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.3.2015

Coram:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE T.RAJA

H.C.P.No.2397 of 2014

Prabakaran

...Petitioner

vs.

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

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

...Respondents

Prayer: This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus to call for the records relating to the second respondent pertaining to the detention order made in C.M.P.No.13/B.L.A./C2/2014 dated 26.8.2014 in detaining the detenu under Tamil Nadu Act 14/1982 as ''Bootlegger'' and quash the same and further direct the respondents to produce the said detenu, namely Prasanth son of Selvam, aged about 25 years, who is detained at Central Prison, Salem before this Court and set set him at liberty.

For Petitioner : Mr.D.Veerasekaran

For Respondents : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This Habeas Corpus Petition is filed by the brother of the detenu, namely, Prasanth, aged 25 years, son of Selvam, to issue a Writ of Habeas Corpus to call for the records in C.M.P.No.13/B.L.A./C2/2014 dated 26.8.2014 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), read with orders issued by the Government in G.O.(D) No.152, Home, Prohibition and Excise (XVI) Department, dated 18.7.2014, under Sub Section (2) of Section 3 of the said Act, branding him as a "Goonda", in the Central Prison, Salem, 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, the learned counsel for the petitioner has assailed the impugned detention order only on the ground of non-supply of copy of the chemical analysis report of the Deputy Director and Assistant Chemical Examiner, Regional Forensic Science Laboratory, Salem, to the detenu, wherein it is stated that the samples contain Ethil Alcohol, Acids, Esters, Higher Alcohol and Aldehydes and that the arrack was detected to have the toxic particles with poinsonous substance, referred to in the grounds of detention, for arriving at the subjective satisfaction that the detenu is a Bootlegger, as defined in Section 2(b) of the Tamil Nadu Act 14/1982, which has affected the constitutional right of making an effective and purposeful representation to the authorities concerned, thereby vitiating the detention.

3. Per contra, the learned Additional Public Prosecutor would submit that the impugned detention order has been passed on cogent and sufficient materials and there is no illegality or infirmity in the impugned order of detention. However, he admitted that the copy of the chemical analysis report of the Deputy Director and Assistant Chemical Examiner, Regional Forensic Science Laboratory, Salem, was not supplied to the detenu.

4. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and thoroughly scanned through the impugned detention order and the entire materials available on record.

5. It is seen from paragraph 3 of the Grounds of Detention that in the chemical analysis report, the Deputy Director and Assistant Chemical Examiner, Regional Forensic Science Laboratory, Salem, had reported that the samples contained Ethil Alcohol, Acids, Esters, Higher Alcohol and Aldehydes and that the arrack was detected to have the toxic particles with poisonous substance. On a perusal of the Paper Book furnished by the Prosecution, it is seen that it does not contain the copy of the chemical analysis report. The said chemical analysis report was a document relied upon by the Detaining Authority to come to a subjective satisfaction that the detenu was a bootlegger, as defined in Section 2(b) of the Tamil Nadu Act, 14/1982, and thereby acted in a manner prejudicial to the maintenance of public order and public health. Admittedly, such a document has not been supplied to the detenu, as it did not form part of the Paper Book furnished by the Prosecution. Therefore, non supply of the copy of the chemical analysis report to the detenu would vitiate the impugned detention order.

6. The Honourable Supreme Court in RAM CHANDRA A. KAMAT V. UNION OF INDIA (1980) 2 SCC 271, has held as follows:

".....The Supreme Court held that all the documents concerned that are referred to, relied upon or taken into consideration by the detaining authority have to be supplied to the detenu as part of the grounds as to enable the detenu to make an effective representation immediately on receiving the grounds of detention. The same is not having been done, the continued detention must be held to be void. Further, the documents concerned were not examined by the detaining authority but by the Secretary. They were not placed before the detaining authority but they are concerned with the commission of offence. When the said documents which were placed before the Secretary were not supplied to the detenu, the Supreme Court held that the detention of the petitioner must be void."

7. As already analysed by us, in the facts and circumstances of the present case, non-supply of the copy of the chemical analysis report to the detenu has the effect of vitiating the impugned detention order. Further, due to non-supply of such a vital document, the detenu has lost his valuable right to make an effective representation to the authorities concerned.

8. 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 be quashed.

9. In the result, this Habeas Corpus Petition is allowed. The impugned detention is set aside. The detenu is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vsi/lan

To

1. The Secretary to the Government
Home Prohibition and Excise Department,
Government of Tamil Nadu
Fort St. George, Chennai - 600 009
2. The District Magistrate and
District Collector,
Salem District,
Salem.
3. The Superintendent, Central Prison,
Salem.
4. The Joint Secretary to Government,
Public (Law & Order)
Fort St. George, Chennai - 9.

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5. The Public Prosecutor,
High Court, Chennai.

1 CC to Mr.D.Veerasekaran, Advocate SR.No. 12037

H.C.P.No.2397 of 2014

TM (CO)
PSI (07.04.2015)



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