



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

HABEAS CORPUS PETITION (MD) No.1284 of 2014

P.Balakrishnan .. Petitioner/Friend of the detenu
Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George,
Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District,
Nagapattinam.
- 3.The Inspector of Police,
Prohibition Enforcement Wing,
Nagapattinam,
Nagapattinam District. .. Respondents

PRAYER:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus praying to call for the records relating to the impugned order in respect of C.O.C.No.54/2014, dated 05.11.2014 on the file of the second respondent herein and set aside the same as illegal and direct the respondents to produce the detenu Vaithilingam, Son of Somu, aged about 51 years, now confined at Central Prison, Tiruchirappalli before his Court and set him at liberty and pass such further or other orders.

For Petitioner : Mr.Ilayaraja Kandasamy
For Respondents: Mr.A.Ramar, Addl.Public Prosecutor

ORDER

(Order of the Court was made by A.SELVAM, J)

<https://hcservices.ecourts.gov.in/hcservices/>
This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to call for records relating to detention order passed in C.O.C.No.54/2014, dated



05.11.2014 by the detaining authority, who has been arrayed as second respondent herein against the detenu by name Vaithilingam, Son of Somu and quash the same and thereby set him at liberty forthwith.

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2. The Sub-Inspector of Police, Prohibition Enforcement Wing, Nagapattinam as sponsoring authority has submitted an affidavit to the detaining authority, wherein it is stated that the detenu has involved in the following adverse cases:

(i) Crime No.14 of 2014 Thirukkuvalai Police Station registered under Section 4(1)(aaa) TNP Act, 1937.

(ii) Crime No.31 of 2014 Thirukkuvalai Police Station registered under Sections 4(1)(aaa) read with 4(1-A) TNP Act, 1937 altered into Section 4(1)(aaa) of TNP Act, 1937.

(iii) Crime No.496 of 2014 Nagapattinam Prohibition Enforcement Wing registered under Sections 4(1)(aaa) read with 4(1-A) TNP Act, 1937 altered into Section 4(1)(aaa) of TNP Act, 1937.

(iv) Crime No.659 of 2014 Nagapattinam Prohibition Enforcement Wing registered under Sections 4(1)(aaa) read with 4(1-A) TNP Act, 1937 and 4 and 5 of TNRS Rules.

3. Further it is stated in the affidavit that on 09.10.2014, the Sub-Inspector of Police, Prohibition Enforcement Wing, Nagapattinam has conducted a raid and ultimately found that the detenu is in possession of illicit arrack and consequently a case has been registered in Crime No.748 of 2014 under Sections 4(1)(aaa), 4(1)(i) read with 4(1-A) TNP Act, 1937 and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

4. The detaining authority, after considering the averments made in the affidavit and other connected documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as 'Boot Legger' by way of passing the impugned detention order and in order to quash the same, the present Habeas Corpus Petition has been filed by the friend of the detenu as petitioner.

5. On the side of the respondents a counter has been filed, wherein it has been contended to the effect that all the averments made in the petition are false and ultimately prayed to dismiss the same.

6. The learned counsel appearing for the petitioner has contended that on 07.11.2014, a representation has been submitted to the detaining authority and the same has not been disposed of and therefore, the detention order in question is liable to be quashed.



7. The learned Additional Public Prosecutor has contended that the representation submitted on the side of the detenu to the detaining authority has been duly considered.

8. It is seen from the records that the detention order in question has been passed on 05.11.2014 and the detenu has submitted a representation on 07.11.2014 to the detaining authority, who has been arrayed as second respondent herein, but the detaining authority has not disposed the same in full-fledged manner and therefore it affects rights of the detenu guaranteed under Article 22(5) of the Constitution of India and on that ground alone, the detention order in question is liable to be quashed.

9. In fine, this Habeas Corpus Petition is allowed and the detention order passed in C.O.C.No.54/2014, dated 05.11.2014 by the second respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., Vaithilingam, Son of Somu at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/-

Assistant Registrar(C.O.,)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
Department of Prohibition and Excise (Home),
Fort St. George, Chennai - 600 009.
- 2.The District Collector and District Magistrate,
Nagapattinam District, Nagapattinam.
- 3.The Inspector of Police,
Prohibition Enforcement Wing,
Nagapattinam, Nagapattinam District.
- 4.The Joint Secretary to Government of Tamilnadu,
Public (Law & order) Department, Fort St.George, Chennai-9.
- 5.The Superintendent, Central Prison, Tiruchirappalli.
[in duplicate to communicate this detenu]
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN
H.C.P (MD) No.1284 of 2014
30.03.2015