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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

HABEAS CORPUS PETITION(MD)No.1401 of 2014

Latha

..Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Chennai - 600 009.

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

..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 entire records connected with the detention order of the respondent No.2 in H.S.(M) Confdl.No.30/2014, dated 30.10.2014 and quash the same and consequently direct the respondents to produce the body or person of A.Kalkandu @ Jebaraj, Son of Asirvatham Nadar, aged 48 years now confined at Central Prison at Palayamkottai before this Court and set him at liberty and pass such further or other orders.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.A.Ramar

Addl.Public Prosecutor

ORDER

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

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 H.S.(M) Confdl.No.30/2014, dated 30.10.2014 by the detaining authority, who has been arrayed as second respondent herein against the detenu by name A.Kalkandu @ Jebaraj, Son of Asirvatham Nadar and quash the same and thereby set him at liberty forthwith.

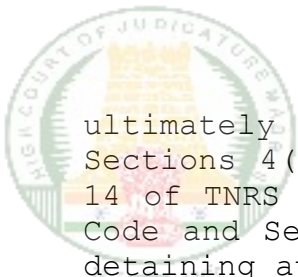
2. The Inspector of Police, Thoothukudi Prohibition Enforcement Wing as sponsoring authority has submitted an affidavit to the detaining authority, wherein it is stated that the detenu has involved in the following adverse cases:

(i) Crime No.407 of 2011 Thiruchendur Prohibition Enforcement Wing registered under Section 4(1)(a) of TNP Act.

(ii) Crime No.122 of 2012 Kurumbur Police Station registered under Sections 8 (c) read with 20(b)(ii)(A) of NDPS Act, 1985.

<https://hcservices.ecourts.gov.in/hcservices/>

3. Further it is stated in the affidavit that on 06.10.2014, the detenu is found in possession of some liquor bottles illegally and



ultimately a case has been registered in Crime No.903 of 2014 under Sections 4(1)(aaa) read with 4(1-A), 4(1)(H) TNP Act read with 7, 13 and 14 of TNRS Rules, 2000 and Sections 420, 468 and 328 of the Indian Penal Code and Section 66 of Central Excise Rules and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

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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 wife of the detenu as petitioner.

5. On the side of the respondents a detailed 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 detenu has contended that on the side of the detenu a representation has been submitted and the same is not disposed of without delay 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 is duly considered and disposed of without delay and therefore the detention order in question does not call for any interference.

8. On the side of the respondents, a proforma has been submitted wherein it has been clearly stated that in between Column Nos.7 to 9, twenty clear working days are available and in between Column Nos.12 and 13, five clear working days are available and no explanation has been given on the side of the respondents with regard to huge delay in disposing of the representation submitted on the side of the detenu and that itself would affect the rights of the detenu guaranteed under Article 22(5) of the Constitution of India and therefore the detention order in question is liable to be quashed.

9. In fine, this Habeas Corpus Petition is allowed and the detention order dated 30.10.2014 passed in H.S.(M) Confdl.No.30/2014 by the second respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., A.Kalkandu @ Jebaraj, Son of Asirvatham Nadar at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. THE SECRETARY TO GOVERNMENT

HOMR, PROHIBITION AND EXCISE DEPARTMENT, CHENNAI - 600 009.

2. THE DISTRICT COLLECTOR AND DISTRICT MAGISTRATE, THOOTHUKUDI DISTRICT,
THOOTHUKUDI.



3. THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI
(IN DUPLICATE TO COMMUNICATE THE DETENUE)

4. THE JOINT SECRETARY TO GOVT., OF TAMILNADU,
PUBLIC (LAW & ORDER), FORT ST.GEORGE, CHENNAI-9.

5. THE DIRECTOR GENERAL OF POLICE, CHENNAI-4.

6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to Mr.T.A.Ebenezar, Advocate in SR.13926

H.C.P (MD) No.1401 of 2014
23.03.2015

ps

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