



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

HABEAS CORPUS PETITION (MD) No.1492 of 2014

E.Nithiyakalyani

.. Petitioner

Vs.

1.State rep. By its
Inspector of Police,
Gingee Prohibition Enforcement Wing,
Kovilpatti,
Thoothukudi District.

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

3.The Superintendent,
Central Prison,
Palayamkottai.

.. 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 entire records of the second respondent in his proceeding H.S(M) Confdl.No.24/2014, dated 14.10.2014 and quash the same and consequently direct the respondents to produce Settu, Son of Munusamy, aged 30 years now confined in Central Prison, Palayamkottai before this Court and set him at liberty and pass such further or other orders.

For Petitioner : Mr.C.M.Marichellaiah Prabhu

For Respondents : Mr.C.Ramesh
Additional 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.24/2014, dated 14.10.2014 by the detaining authority, who has been arrayed as second respondent herein against the detenu by name Settu, Son of Munusamy and quash the same and thereby set him at liberty forthwith.



2. The Inspector of Police, Prohibition Enforcement Wing, Kovilpatti 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.75 of 2013 Sathankulam Police Station registered under Sections 468 and 471 of the Indian Penal Code and also under Sections 4(1)(aaa), 4(1-A) of TNP Act.

(ii) Crime No.151 of 2014 Gingee Prohibition Enforcement Wing registered under Sections 4(1)(aaa), 4(1-A) of TNP Act and also under Sections 420, 468, 471, 473 of the Indian Penal Code read with Section 135 of Trad Mark Act, 1985.

3. Further it is stated in the affidavit that on 21.09.2014 at about 05.00 hours, the Inspector of Police, Prohibition Enforcement Wing and others have conducted a raid and at that time, the detenu is found in possession of some quantity of illicit arrack and consequently, a case has been registered against him in Crime No.574 of 2014 under Sections 4(1)(a) and 4(1-A)(ii) of TNP Act and ultimately requested the detaining authority to invoke Act 14 of 1982 against the detenu.

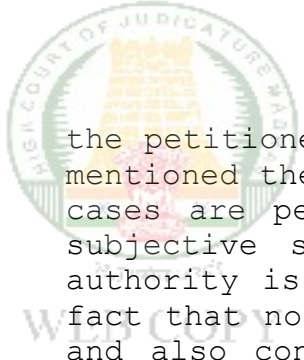
4. The detaining authority, after considering the averments made in the affidavit and other connected documents, has derived subjective satisfaction to the effect that the detenu is a habitual offender and ultimately branded him as 'Boot Legger' by way of passing the impugned detention order and in order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

5. On the side of the respondents counter has been filed, wherein it has been contended *inter alia* 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 the detaining authority has relied upon the order passed in Crl.M.P.No.2058 of 2014 by the District and Sessions Court, Thoothukudi, but the facts mentioned therein are not similar to the facts and circumstances of the present case and therefore, the detaining authority has not properly applied his mind in deriving subjective satisfaction. Under the said circumstances, the detention order in question is liable to be quashed.

7. The learned Additional Public Prosecutor has contended that the detaining authority, after considering the order passed in Crl.M.P.No.2058 of 2014 by the District and Sessions Court, Thoothukudi, has rightly derived subjective satisfaction to the effect that the detenu would file a bail application so as to come out from jail and therefore, the detention order in question does not call for any interference.

8. As narrated supra, against the detenu two adverse cases of similar nature have been instituted. In fact, this Court has perused the order passed in Crl.M.P.No.2058 of 2014 wherein it has been clearly stated that



the petitioner therein has not involved in previous cases, except the case mentioned therein. But in the instant case, as stated earlier, two adverse cases are pending against the detenu. Under the said circumstances, the subjective satisfaction alleged to have been derived by the detaining authority is not proper. The detaining authority, without considering the fact that no bail application has been filed by the detenu in ground case and also considering that the petitioner in Crl.M.P.No.2058 of 2014 has not committed similar offence earlier, has erroneously derived subjective satisfaction and that itself would be sufficient for coming to a conclusion that 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 H.S(M)Confdl.No.24/2014, dated 14.10.2014 by the second respondent/detaining authority is quashed and consequently the respondents are directed to set the detenu viz., Settu, Son of Munusamy at liberty forthwith, unless he is required to be incarcerated in connection with any other case.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To

- 1.The Inspector of Police,
Gingee Prohibition Enforcement Wing,
Kovilpatti, Thoothukudi District.
- 2.The District Magistrate and District Collector,
Thoothukudi District.
- 3.The Superintendent, Central Prison, Palayamkottai.
4. The Secretary to Government, Home,
Prohibition and Excise, Department Fort saint George, Chennai - 9
- 5 The Joint Secretary to the Government,
Public (Law & Order) Fort St. George, Chennai - 600 009.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

TS/07.04.2015/3P-7C

ORDER MADE IN
H.C.P (MD) No.1492 of 2014

06.04.2015