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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1018 of 2015

Jaffar

.. Petitioner

Vs.

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

2.The District Magistrate and District Collector,
Office of the District Magistrate and District
Collector, Tirunelveli District.

3.The Superintendent of Police,
Palayamkottai Central Prison,
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records relating to the detention order passed by the 2nd respondent in M.H.S.Confdl.No.73/2015, dated 26.06.2015, quash the same and direct the respondents to produce the body or person of the detenu by name Jaffar, S/o.Jiyathu, aged about 24 years, now detained in Palayamkottai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Ramar,
Additional Public Prosecutor.

O R D E R

[Order of the Court was made by P.R.SHIVAKUMAR, J]

<https://hcservices.ecourts.gov.in/hcservices/>
The detenu himself is the petitioner in this Habeas Corpus Petition. He was detained by order of detention passed by the second respondent in M.H.S.Confdl.No.73/2015, dated 26.06.2015,



holding him to be a bootlegger and expressing subjective satisfaction that his presence at large would be detrimental to the maintenance of public order and public health.

2.The impugned order of detention has been passed on the ground case alone and no adverse case has been taken note of. Though a number of grounds have been raised by the petitioner challenging the order of detention, the learned counsel for the petitioner mainly relies on the following ground:

Noticing the ground case in Crime No.646 of 2014 said to have been registered on the file of the Alangulam Police Station for offences under Sections 147, 120(b) IPC, 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act r/w Rule 7 of the Tamil Nadu Rectified Spirit Rules, the detaining authority referred to an order passed by the learned Judicial Magistrate, Tenkasi on 07.05.2015 in Cr.M.P.No.4976 of 2015 to express subjective satisfaction that the petitioner was more likely to be released on bail and it would be detrimental to the maintenance of the public peace and public health, if the petitioner is not detained by an order of detention.

3.The learned counsel for the petitioner submits that the observation that the petitioner was likely to be released on bail in the ground case, was nothing but the *ipse dixit* of the detaining authority, exhibiting non application of mind to the facts under which the bail order was granted, which was referred to as the basis for the subjective satisfaction. The learned counsel for the petitioner submits that though the order of the learned Judicial Magistrate, Tenkasi, dated 07.05.2015, made in Cr.M.P.No.4976 of 2015 was one passed in respect of a co-accused in the very same crime number, the said order came to be passed under Section 167(2) Cr.P.C. and that without even noticing the fact that the co-accused was released granting statutory bail, whereas the petitioner/detenu would become eligible for such statutory bail only after a lapse of 60 days from the date of his arrest in the ground case, the detaining authority has passed the order of detention.

4.There is substance in the above said submission made by the learned counsel for the petitioner. This Court is satisfied that the detaining authority has not applied its mind with regard to the imminent possibility of the detenu coming out on bail in the ground case. This Court is also satisfied that the reason assigned for expressing such subjective satisfaction was not cogent. On that ground alone, the petitioner is entitled to his liberty.

<https://hcservices.ecourts.gov.in/hcservices/> result, this Habeas Corpus Petition is allowed and the impugned Detention Order in M.H.S.Confdl.No.73/2015, dated 26.06.2015, passed by the second respondent is set aside. The



petitioner/detenu is ordered to be set at liberty forthwith, if he is not required for detention in connection with any other case.

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/True Copy/

Sd/-

Assistant Registrar(AS)

Sub Assistant Registrar

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The District Magistrate and District Collector,
Office of the District Magistrate and District
Collector, Tirunelveli District.
- 3.The Superintendent of Police,
Palayamkottai Central Prison,
Tirunelveli District.
- (In Duplicate to communicate to the detenu)
- 4.The Joint Secretary to Government of Tamil Nadu,
Public (Law and Order), Forty St.George, Chennai-9
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6.The Commissioner of Police,
Tirunelveli District

+1cc to Mr.R.Alagumani, Advocate Sr.No. 64634
gcb
AA/SKS-RR/17.11.2015/3p-9c

Order Made in
H.C.P (MD) No.1018 of 2015
02.11.2015