



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR
and
THE HONOURABLE MR. JUSTICE V.S.RAVI

H.C.P.(MD)No.1128 of 2015

Manoharan

.. Petitioner

Vs.

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

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

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

.. Respondents

Prayer : Petition under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus calling for the entire records connected with the detention order of the second respondent in M.H.S.Confdl No.85/2015 dated 23.07.2015 and quash the same and direct the respondents to produce the body or person of the detenu by name Manoharan S/o.Govinthan, aged about 23 years, now detained at Palayamkottai Central Prison before this court and set him at liberty forthwith.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Ramar

Addl.Public Prosecutor

O R D E R

(Order of the Court was made by **P.R.SHIVAKUMAR.,J.**)

The petitioner is the detenu. He was detained by the second respondent by his order in M.H.S.Confdl No.85/2015 dated 23.07.2015, holding him to be a "Boot-legger", as contemplated under Section 2(b) of the Tamil Nadu Act 14 of 1982, taking note of the ground case in Crime No.109 of 2015 on the file of Pappakudi Police Station for alleged offences punishable under Sections 4(1)(aaa) and 4(1)(A) of Tamil Nadu Prohibition Act and Sections 468, 471, 476 of the Indian Penal Code.



2. The Detaining Authority viz., the second respondent, clamped the Order of Detention, after expressing subjective satisfaction that the petitioner conformed to the definition of "bootlegger", as his presence at large would be prejudicial to the maintenance of public order and public health. The Detaining Authority has also expressed a subjective satisfaction that there was imminent possibility of his coming out on bail in the ground case.

3. Though the order of detention is assailed on several grounds, the learned counsel for the petitioner mainly relies on the contention that the Detaining Authority clamped the order of detention mechanically and without application of mind, insofar as the Detaining Authority, while exercising subjective satisfaction of the detenu coming out on bail, has referred to multiple cases rather than a single case viz., ground case, in which alone he was arrested and remanded. The relevant portion in the grounds of detention reads as follows:

"I am aware that Thiru.Manoharan is in remand in Pappakudi Police Station Crime Number 109/2015 and in this case he has not filed any bail application so far. I am also aware that there is real possibility of his coming out on bail in future by filing bail application for the above cases since in similar cases bails are granted by the appropriate courts."

4. The learned Additional Public Prosecutor has made a meek attempt to contend that it is only a typographical error which should not be given weight. On the other hand, the learned counsel for the petitioner would submit that the order being one passed depriving a person of his liberty without trial, utmost care should have been taken by the Detaining Authority. It is the further contention of the learned counsel for the petitioner that failure to note even the alleged typographical error which refers to more than one case will show non application of mind on the part of the Detaining Authority and the subjective satisfaction shall be termed *ipse dixit*.

5. We are satisfied with the above said contention of the learned counsel for the petitioner and we hold that the subjective satisfaction regarding imminent possibility of the detenu coming out on bail in the ground case is nothing but an *ipse dixit* expressed in a casual way and in a routine manner. On that ground alone the order of detention is liable to be set aside, holding it to be vitiated.



6. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 23.07.2015, made in M.H.S.Confdl No.85/2015, by the second respondent / District Collector and District Magistrate, Tirunelveli and directs the release of the detenu by name Manoharan S/o.Govinthan, aged about 23 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

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To

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

GJM/GSV/PM/3.12.2015-3P-7C

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