



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR. JUSTICE V.S.RAVI

H.C.P.(MD)No.1161 of 2015

S.Murugan

.. Petitioner

Vs.

1.The Secretary to Government

Home, Prohibition and Excise Department

Fort. St.George, Chennai - 600 009

2.The District Collector and District Magistrate,

Tirunelveli District, Tirunelveli.

3.The Inspector of Police,

Pappakudi Police Station,

Tirunelveli District.

.. Respondents

Prayer : Petition under Article 226 of the Constitution of India, praying to pass an order in the nature of Habeas Corpus by calling for the entire records pertaining to the order of detention passed by the 2nd Respondent vide his proceedings in MHS.Confdl No.91/2015 dated 28.07.2015 and quash the same and consequently set the detenu by name M.Rajaram, S/o.S.Murugan (Male aged 27 years) who is presently confined at Central Prison, Palayamkottai, Tirunelveli at liberty.

For Petitioner : Mr.R.Anand

For Respondents : Mr.A.Ramar

Additional Public Prosecutor

O R D E R

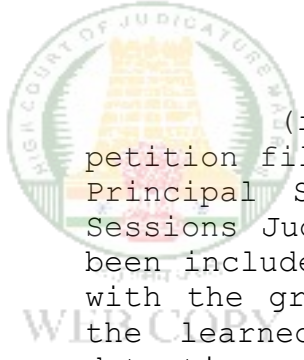
(Order of the Court was made by P.R.SHIVAKUMAR.,J.)

The petitioner is the father of the detenu. The detenu was detained by the second respondent by his order in MHS.Confdl No.91/2015 dated 28.07.2015, 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 and 476 of the Indian Penal Code.

2.The Detaining Authority viz., the second respondent herein, clamped the Order of Detention, after expressing subjective satisfaction that the petitioner conformed to the definition of "boot-legger", 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 number of grounds have been raised assailing the order

<https://hcservices.courts.gov.in/hcservices/> learned counsel for the petitioner mainly relies on the following contentions:



(i) The Detaining Authority referred to the dismissal of a bail petition filed by the detenu in Cr.M.P.No.4377 of 2015 on the file of the Principal Sessions Judge, Tirunelveli, but copy of the order of the Sessions Judge has not been furnished to the detenu and the same has not been included in the typed set in a booklet furnished to the detenu along with the grounds of detention. The same, according to the contention of the learned counsel for the petitioner, will vitiate the order of detention on the ground that a material which was not placed before the authority was referred to and relied on.

(ii) It is the further submission of the learned counsel for the petitioner that the copy of the said bail petition found at pages 91 and 92 contains an endorsement. Such an endorsement was made and signed by the Public Prosecutor, Tirunelveli. The same seems to have been relied on by the Detaining Authority as an order of dismissal of the bail petition filed by the detenu.

4. As rightly contended by the learned counsel for the petitioner, the Detaining Authority did not bestow its attention to the said fact that the order was stated to be passed by the Public Prosecutor and not by the Sessions Judge. The same, as rightly contended by the learned counsel for the petitioner will show mechanical clamping of the order without application of mind. On that ground alone, the order of detention is liable to be set aside.

5. In the result, the Habeas Corpus Petition is allowed and this Court sets aside the order of detention dated 28.07.2015, made in M.H.S.Confdl No.91/2015, by the second respondent / District Collector and District Magistrate, Tirunelveli and directs the release of the detenu by name M.Rajaram, S/o.S.Murugan, aged 27 years forthwith, if his custody/detention is not authorised in specific cases or by any other order of detention.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government
Home, Prohibition and Excise Department
Fort. St. George, Chennai - 600 009
2. The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.
3. The Inspector of Police,
Pappakudi Police Station,
Tirunelveli District.

4. The Additional Public Prosecutor,
Madurai, Prison of Madras High Court, Madurai.



5.The Superintendent, Central Prison, Playamkottai

(In Duplicate for Communication to detenu)

6.The Joint Secretary to Government,
Public (Law & Order)

Fort Saint George, Chennai-9.

+1cc to M/s.R.Anand, Advocate Sr.No.67219/15

sm:PM:2.12.2015:3P/8c

H.C.P (MD) No.1161 of 2015
19.11.2015